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# The Mortgage of the Past

Reshaping the Ancient  
Political Inheritance  
(1050–1300)



FRANCIS OAKLEY

The Emergence of Western Political Thought in the Latin Middle Ages

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FRANCIS OAKLEY

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*To*  
*Claire-Ann*

If a man could well observe that which is delivered in the histories, concerning the religious rites of the Greeks and Romans, I doubt not but he might find many... [of those]... old empty bottles of Gentilism, which the doctors of the Roman Church, either by negligence or ambition, have filled up again with the new wine of Christianity, that will not fail in time to break them.

**THOMAS HOBBS**, *Leviathan*, pt. 4, ch. 45

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# General Introduction

IN THE THREE VOLUMES I plan for this series it is my ambition not simply to address, and in adequate depth, the political thinking of the centuries labeled by stubborn historiographical convention as “medieval,” but also to effect something of a shift in the perspective from which we characteristically view that body of thought.<sup>1</sup> And beyond that, indeed, it is also my ambition to engineer if I at all can a modest measure of reshaping in the constitutive narrative which has long served to frame the way in which we understand the full course of Western political thought. No more than implicit, that narrative has served nonetheless to determine the periods to which most attention has usually been paid (classical Greece—or, more accurately, Athens—of the fifth and fourth centuries BCE and western Europe of the sixteenth to the twentieth centuries). It has served also to foreground the texts on which students have habitually been encouraged to focus (Plato and Aristotle, Machiavelli, the great contract theorists from Hobbes to Kant, the nineteenth-century Utilitarians, and so on), and to frame the interpretative perspective from which those texts have usually been approached. In that formative narrative, it is fair to say, the medieval contribution has never bulked all that large. Certainly it has never succeeded in finding a place under the bright lights of center stage. Instead, the Middle Ages have characteristically been seen as standing out in the long history of Western political thinking as something of an aberration, as a deviation from the norm, as a period in which the “natural” categories of political thinking were pushed to one side by religious motifs of supernatural bent.

Thus despite a century and more of cumulative endeavor in the fields of cultural anthropology and comparative religion, we continue to hear about “the essentially *secular* unity of life in the classical age” and about the Hellenistic propensity for *introducing* the supernatural into politics. We are still reminded that Christianity made “*purely political* thought impossible,” that “the peculiar problem of Church and State,” which Christianity introduced, involved “the greatest perturbation which has ever drawn men’s thoughts about the state *out of their properly political orbit*,” that “Medieval Europe offers *for the first time in history* the paradoxical spectacle of a society trying to organize itself politically on the basis of a spiritual framework,” and that it was only with the collapse of the medieval ideal of a Christian commonwealth” that there occurred “*a return to a more purely political* conception of the State.”<sup>2</sup> Such was the perspective embedded also in Walter Ullmann’s many learned contributions to our understanding of medieval political thinking.<sup>3</sup> Implicit in this view is the assumption that despite all

surface differences there is a fundamental continuity between modern political thought and that of the classical world, both periods being committed, presumably, to the “natural” and “secular” modes of analysis proper to “purely political thought.”

I would venture to suggest, however, that that way of looking at things is destined to change if one makes the bracing effort to approach and judge the European and Western political experience from the outside as well as the inside and to see it, especially, from the broader perspective afforded by a reflective engagement with the millennial unfolding of universal or world history. In this work, then, it is my endeavor to do precisely that.

Adopt that perspective, of course, and the transition from the archaic and classical (or, indeed, from the world of Celtic and Germanic paganism) to the Christian outlook emerges as a shift not so much from a secular to a religious viewpoint as from one ancient and widespread mode of religious consciousness to another and radically different one. In effect, the historical “rhythm” that one finds emerging from the ebb and flow of ideas is not a secular-religious-secular one, but rather, religious-religious-secular. Adopt that perspective, too, and one’s attention is inevitably drawn not simply to the marked secularity characteristic of political thinking in the modern era but also to some other of its features that are, historically speaking, really quite singular. Namely, its preoccupation with the nation-state and the emphasis it tends to place on the limited, instrumental, “artificial” nature of that state; the intensity of its focus on the problem of political obligation; its reliance on the notion of consent as the principal route to a resolution of that problem; its specific understanding of consent not in collective terms but as a concatenation of individual acts of willing, and, presupposed by that, its bone-deep commitment to the notion of autonomous individuality, and, with it, its marked preoccupation with the vindication of the subjective rights of individuals.<sup>4</sup> These dominant characteristics of modern political thinking are so familiar to us, so much part of the inherited furniture of our minds, that we are habitually tempted, sometimes at the expense of rampant anachronism, to take them utterly for granted as something *natural* to humankind. Seen from world-historical perspective, however, those characteristics stand out instead (and in comparison no less with what we identify as our own ancient past than with the cultural heritage of civilizations other than our own) as marked by great singularity and as calling, accordingly, for a strenuous effort at explanation. Embark upon such an effort, moreover, or so I will be arguing, and one is led ineluctably to focus on the Latin Middle Ages as the intellectual seedbed, in political thinking as in so much else besides, of Western cultural singularity. For it was “the Middle Ages,” as Umberto Eco once memorably put it, that “turned us into Western animals.”<sup>5</sup>

Hence the overall title of this series, obviously and by intention tendentious. That duly acknowledged, I should concede that it is also

inadequately descriptive because in order to achieve my purpose, I have had to transgress, and at both ends, the confines of the period traditionally designated as “medieval.” Thus, at one end I have been led to reach deep into the ancient past, and at the other, to extend my story well into the centuries we are now accustomed to labeling as “early modern.” Though it remains immovably embedded in the chronological vocabulary we are forced, willy-nilly, to deploy, the traditional periodization of European history into ancient, medieval, and modern (essentially a Renaissance humanist contrivance) is as much a hindrance as a help when it comes to understanding the course of European and Western intellectual history. It has come across time, indeed, to take on the attributes of a clumsily Ptolemaic system, calling for an ever-increasing number of enabling epicycles to keep at all functional. If we must operate within that system, it should be recognized that we do so, perforce, uneasily.

Those to whom it is anathema for an historian to seek from the past answers to questions generated by “presentist concerns” rather than chastely restricting himself to the questions that people in the particular period under scrutiny themselves generated, or who are prone to insisting that the historian *must* derive his notions of what is significant from those of people living in the particular historical period under discussion, may doubtless be inclined to label my own admittedly present-oriented approach to the medieval phase in the history of political thought as crassly “presentist” or as mired in some sort of “mythology of prolepsis.”<sup>6</sup> While doubtless useful for frightening the children, the charge, however, carries no real intellectual force. Any intellectual history, certainly, that was written in strict conformity with such strictures would be a very odd history indeed. Most such histories, accordingly, will be found to combine, albeit in differing measure, the historian’s traditional focus on the historicity of past texts with some orientation also to the concerns and questions generated by the era and circumstances in which the historian is himself doing his writing.<sup>7</sup> And properly so. To attempt to preclude such an approach on the grounds of some forlorn quest for a species of historical “purism” reflects, I believe, a confusion of concerns pertaining to the genuine historicity of the *meanings* we wrest from the documents of the past with those very different concerns that pertain to the *significance* that we ourselves, anchored in the present, attach to such meanings.<sup>8</sup> As Quentin Skinner has properly acknowledged, there is nothing illegitimate about an historian’s being “more interested in the retrospective significance of a given historical work or action than in its meaning for the agent himself.” Always assuming, of course, that that historian is not tempted to turn judgments about such a work’s significance into affirmations about its contents.<sup>9</sup>

In this work, then, my choice of perspective notwithstanding, it is my hope that medieval specialists will find that the texts discussed have been handled with due attention paid to their embedment in the historically specific

conditions and circumstances of the era and society in which they were produced. It being my hope, too, that my overall interpretation may conceivably have something useful to say to nonmedievalists whose concerns have focused on the modern phase in the history of political thought, I have attempted to encourage an appreciation of the conditioning specificities of time and place by beginning with a brief “historical orientation.” Its aim is to provide at least the general coordinates needed if the evolving argument is to be situated on the historical map. Readers for whom such historiographic props are redundant need not hesitate to skip that chapter and to move on without delay to engage the unfolding argument in the more substantive chapters that follow it.

In the first volume of this series I focused most intently upon the theme of kingship which was central to the first millennium of the Christian or Common Era—its ubiquity worldwide, its deep rootage in the archaic past, its fundamentally sacral character, and the complex transpositions its supportive ideology underwent at the hands of Jewish, Muslim, and Christian writers, Greek as well as Latin. In that volume we saw Hobbes’s “old empty bottles of Gentilism” being refilled indeed with the new wine of Christianity, but that move accomplished, astonishingly, without having the effect of immediately shattering them.

During the two and a half centuries covered by this second volume, that state of affairs began to change and the first serious cracks began to open up in the archaic cultural carapace under which, so far as politics were concerned, the destabilizing novelties that were part and parcel of the Christian tradition had for long centuries been contained. The period, which was one buffeted by unusually vigorous winds of change and shaped by great economic, cultural, and economic creativity, began and ended with moments of great drama. It began with the revolutionary assault which Pope Gregory VII launched against the age-old and well-nigh universal notion that kings were sacred figures assigned an integral role, if you wish, in the order of redemption. They were now to be viewed, instead, as lay folk and nothing more. And it ended in September 1303 with a moment of aggressive secularity, the abject humiliation of Pope Boniface VIII at the hands of mercenaries under French leadership and in French royal pay. If the Gregorian onslaught did not altogether succeed in eliminating the sacral dimension of kingship (and we will see that it did not), what it did do was to quicken the process whereby the cultural nutrients upon which that royal sacrality had depended for its vitality gradually leached out of the European cultural subsoil. To the early medieval era in which “the sacred and profane had been almost inextricably mingled”<sup>10</sup> succeeded now “a period of firmer boundaries and one in which they came progressively to be disengaged one from another.”<sup>11</sup>

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Williamstown, Massachusetts, February, 2011

F.O.



## Prologue

### *Kingship and Its Changing Profile in the Central Middle Ages*

DURING THE LATE ANTIQUE and early medieval centuries a Christianized version of the archaic pattern of sacral kingship had dominated the political scene in the Latin West no less than the Byzantine East. From the late eleventh century onward, however, in the former region, though not in the latter, that was all destined to change. It was not that the institution of kingship itself was called into question or consigned to a process of marginalization. What was called into question, rather, was its age-old sacral dimension. It is true that by the closing years of the thirteenth century town dwellers in the quasi-independent cities or city-states of northern Italy and in the independent-minded communes of Flanders had become accustomed to living under forms of government which, while they did not lack their own sacral dimension,<sup>1</sup> were essentially oligarchic in nature. By that time too, a broader and more variegated cross section of the populace right across Europe had become directly acquainted with the consensual modes of governance characteristic alike of cathedral chapters, of the newer forms of monastic and religious life (Cistercian, Franciscan, Dominican), of the well-nigh ubiquitous merchant and crafts guilds,<sup>2</sup> and of the universities—themselves guilds of masters or students—which had sprung up at such principal centers of learning as Salerno, Bologna, Paris, and Oxford.<sup>3</sup> But all of that notwithstanding, kingship remained the dominant form of government in Europe. And in striking measure, it was with kingship—its mission, forms, and attributes—that the political thinkers of the era continued overwhelmingly to be concerned.<sup>4</sup>

Testimony to that fact is the enduring popularity of the old *speculum principum* (mirror of princes) genre of political writing. Devoted to the instruction or moral formation of rulers, works of that genre characteristically employed the word *princeps* (rather than *rex* or king) as a generic term capable of comprehending the features common to all monarchical or one-person forms of rulership, whether imperial, national, or more localized in their reach. The genre had flourished in the early medieval centuries and was destined to remain in vogue down into the later Middle Ages<sup>5</sup> and on, indeed, into the early modern period when it found notable expression in Machiavelli's *The Prince* (1513), Erasmus's *Institutio principis Christiani* (*Education of a Christian Prince*, 1516), Guillaume Budé's *Instruction d'un prince* (*Education of a Prince*, c. 1516), and Juan de Mariana's *De rege et regis institutione libri tres* (*Three Books Concerning the King and the*

*Education of a King*, 1599).<sup>6</sup> In the period with which this volume is concerned, two major works of political reflection also fitted into the same category: the *De regimine principum* (*On the Governance of Rulers*, 1285) by Aegidius Romanus and the *De regno: ad regem Cypri* (*On Kingship: To the King of Cyprus*) by Thomas Aquinas (1224/6–74). In common with other such works, and in this like political thinking at large, they reflect the changing political circumstances of their day and the transformed intellectual conditions prevailing at the time of their composition. If they are moved to insist that kingship is the best form of government, they do so in the context now of commenting on the classification that Aristotle gives in his *Politics* of good and depraved forms of government.<sup>7</sup> And it is a sign of their times that they tender their advice not to a Holy Roman Emperor but to national or subnational monarchs, the importance of some of whom was now, comparatively speaking, in the ascendant.<sup>8</sup>

In the eleventh and twelfth centuries the German emperors, ruling as they did the most powerful political entity in Europe, had dominated the political scene. Lawyers and publicists alike had not hesitated, therefore, to attribute to them the possession of some sort of ultimate suzerainty over the kings and kinglyings ruling territories that lay outside the imperial borders. By the end of the thirteenth century, however, and with the decline of imperial power well under way, such claims had come increasingly to ring hollow. In the course of his great struggle with Philip IV of France, when recognizing Albert I of Austria's election as king of the Romans and candidate for the imperial title and in an attempt to manipulate to his own advantage the fading theory of empire, none other than Pope Boniface VIII could insist that with that title went the claim to be "emperor and monarch of all kingdoms and princes on earth," the kingdom of France not excluded.<sup>9</sup> The French king's lawyers and publicists met that (by now) improbable claim with an appropriate measure of contempt. But they still took it seriously enough to move to refute it with arguments drawn not simply from the obvious political realities of the day but also from theory. And from that exercise was to emerge the fundamental principle that *rex est imperator in regno suo*—"the king is emperor within his own kingdom." It was in the public law of France that that maxim came to be embedded. But it was swiftly taken up by the other kings of Europe. So much so, indeed, that "all the forms of the modern doctrine of the equality of states in international law" clearly bear its imprint.<sup>10</sup>

By the end of the thirteenth century, then, while political thinkers continued characteristically to focus on kingly rule, the monarchical claims to which they were increasingly drawn to devote attention were of a more novel kind and of different provenance than the claims advanced in previous centuries on behalf of the imperial office. They involved now the claims put forward by royal lawyers and propagandists right across Europe from England to Aragon and Germany to Sicily but especially so in the kingdom of France, now rising to a position of great prominence on the international scene. They

involve also, perhaps more surprisingly, the claims that theologians and canon lawyers were advancing on behalf of a newly ascendant papal monarch aspiring to preeminence in the universal Christian society now called Christendom and certainly wielding imperial power over a church conceived more narrowly as a hierarchically ordered clerical corps that knew no national boundaries. As we have already noted, the stretch of history covered by this volume begins with a titanic papal challenge to the age-old sacral status of an emperor possessed of universalist spiritual as well as temporal pretensions. It is not without significance that it should end in the early fourteenth century with an equally startling challenge. But it was one handed down this time by a national monarch to the universalist claims, temporal as well as spiritual, advanced on behalf of an imperial papacy which, over the two centuries preceding, had appropriated for itself the appurtenances and status of a sacral kingship. In the polemical literature generated by that great clash, which pitted Philip IV of France (1285–1314) against Pope Boniface VIII (1294–1303), was adumbrated (even more clearly than had been the case in the Gregorian era) the intense ecclesiological debate concerning the internal constitution of the church that was destined to rise and fall in intensity in subsequent centuries right down into the modern era and that still rumbles on uneasily in contemporary Roman Catholic circles. It was to move to center stage after the onset in 1378 of the Great Schism of the West and the birth of the conciliar movement and, as we will see in the next volume of this series, was to become one of the most important driving forces of political and constitutionalist thinking in the later medieval period. Its echoes are clearly to be heard in the sixteenth and seventeenth centuries,<sup>11</sup> and they remained powerful enough to generate potent harmonics on the very eve of the French Revolution itself.<sup>12</sup> But so far as the political thinking of the centuries under discussion in this volume is concerned, the great driving forces were other than that. They were, in effect, twofold.

The first was the great conflict between the spiritual and temporal power which the reforming pope Gregory VII initiated in the late eleventh century when he launched his frontal attack on the sacral pretensions of the German emperor Henry IV and the authority which he and his predecessors had exercised as “Vicars of Christ” over the universal church. That conflict, which peaked in intensity during the years stretching from the late eleventh to early fourteenth centuries and expanded to embrace the relations between the papacy and the rising national monarchies of Europe, was to grind on intermittently down into the early modern era. “For the half-millennium between the eleventh and seventeenth centuries,” McIlwain once asserted, “it is not too much to say that the bulk of all the writings which we may term political were directly and primarily concerned with the great controversy between the spiritual and temporal authority.”<sup>13</sup> Certainly the opening phase of this great conflict contrived to generate at the hands of papal and imperial authors alike a veritable ocean of polemical literature without precedent either

in its dimensions or in the extent to which it probed the nature, origins, range, and limits of human governmental authority. Carl Mirbt calculated, indeed, that during little more than a half century, stretching from 1052 to 1112 or so, well over a hundred separate tracts appeared in defense of one or other of the two opposing camps.<sup>14</sup>

The other great driving force helping stimulate and shape political thinking during the two and a half centuries to be addressed in this volume was the recovery of contact and concomitant familiarity with the richly variegated legacy of Greek, Roman, and Christian antiquity. The vigor with which medieval intellectuals interrogated the Graeco-Roman inheritance, as it became newly accessible to them in the course of the twelfth and thirteenth centuries, had a transformative effect on the political thinking of the day. So, too, did the preoccupation of Gregorian reformers with the vision of a “right order” in society that they contrived to find in the ancient Christian past. And so, again, though in ways more indirect and subtle, did the later appropriation by evangelical heretics and monastic innovators alike of a real or imagined “apostolic Christian” norm, sponsoring a more inward species of devotion and the gradual seepage into the late medieval Christian consciousness of a heightened sense of individual personality.

It was, of course, to be centuries before such effects were experienced in their fullness, and we will be called upon to return to them more than once in the third and final volume of this series. In the present volume, moreover, and as we look to that longer future, we will also be called upon to address in preparatory fashion two subsidiary themes. First, the protoconstitutionalist developments that manifested themselves as the thirteenth century wore on. Second, in that same century, and the enduring impact of the Gregorian attack notwithstanding, the resilience exhibited by older notions of sacred monarchy, in the absence of which that strange autumnal flowering in the sixteenth and seventeenth centuries which we know as the Divine Right Theory of Kingship would have been if not inconceivable at least improbable. But that duly acknowledged, I should signal that our main preoccupation in our encounter with the political thinking of the High or Central Middle Ages, following a brief orientation to the dynamic history of the period, will be to address the two great driving forces I have identified: the great conflict between the spiritual and temporal powers and the renewed familiarity with the intellectual legacy of the ancient Greek and Roman past.

# 1. Historical Orientation

## *The Flowering of Medieval Europe*

AT FEW MOMENTS IN the unfolding of European history does the traditional, humanist-inspired periodization into ancient, medieval, and modern present more of a hindrance to understanding than it does as we edge into the period addressed in this volume. Having become accustomed to the rhythms of life and thought characteristic of the early medieval centuries (which constitute in so many ways an epilogue or coda to the world of late antiquity), we now encounter the great transposition that took place in almost every area of life during the eleventh and twelfth centuries, precipitating the crystallization of forms of economic, social, legal, political, religious, and intellectual life differing markedly, the shared designation of “medieval” notwithstanding, from those characteristic of the centuries preceding. Testimony to the sweeping nature of the changes involved is the frequency with which historians seeking to interpret the significance of those centuries are moved in their descriptive and interpretative efforts to turn to the terms “revolution” and “revolutionary.” They do so in relation to demography, agriculture, commerce, religion, law, and politics. They do so also, and more generally, in relation to the transition to a “cited civilization” that took place at this time, as also to the overall changes that reshaped so dramatically the society and imaginary of the period. Thus R. W. Southern can speak of “the secret revolution of these centuries” and insist that it “did not pass unnoticed by contemporaries.”<sup>1</sup> And even more boldly, R. I. Moore can seek to comprehend the dynamic and wide-ranging developments of the whole era stretching from the late tenth to the early thirteenth centuries under the rubric of “The First European Revolution.”<sup>2</sup>

For some, so promiscuous a deployment of such terms may doubtless smack of hyperbole or risk the debasement of an otherwise useful piece of interpretative coinage. But the stubborn fact remains that from the basic demography of Europe all the way to the nature of its intellectual life, the changes that took place at this time were truly sweeping in nature and the quickening in the tempo of life overall quite palpable. So far as demographics go, in the absence of direct statistical evidence we are left with quasi-speculative estimates. But the most generally accepted of these indicates an approximate doubling in the size of the European population between 1000 and 1340 (from ca. 38.5 to 73.5 millions), with a tripling of the size of the northern European population accounting for more than two-thirds of that overall increase.<sup>3</sup> The cessation of invasion from the outside was clearly part of the story. But of critical importance, too, was the fact that the increase in the number of mouths to be fed did not outpace (at least until the late

thirteenth century) the parallel increase in agricultural productivity. The onset of an era of climatic stability, the ongoing clearing of forest land, the concomitant expansion of tillage and pasturage, improvements in field systems and in patterns of crop rotation along with the improvement in nutrition that went with them, the adoption of a new type of plough that could cope effectively with the rich but heavy soils of the northern valleys, the invention of the horse collar which permitted the substitution in agricultural work and haulage of the more efficient power of horses for that of oxen, other technological advances making possible the labor-saving and transformative exploitation of wind and water power—these and other innovations made possible the production and accumulation of agricultural surpluses.<sup>4</sup> In the absence of those surpluses, commerce and industry could not have thrived as they did, to such an extent, indeed, that after long centuries of dependence on silver as a means of exchange, a gold currency was now reintroduced. In the absence of such surpluses, too, the enormous high medieval expansion in the number and size of towns (especially those north of the Alps) would have been utterly inconceivable, and with it, the concomitant shift in the characteristic locus of intellectual and scholarly life from rural monastery to urban school. Similarly absent would have been the stimulus to heightened intellectual creativity and productivity that went with the concentration of unprecedentedly large numbers of teachers and students in such favored, well-organized, and often self-governing institutional settings. Such dramatic changes, and others too, form the backdrop against which the political conflicts and developments of the era unfolded, and are the context in which an increasingly sophisticated understanding of the nature, range, and limits of political authority were hammered out.

Among those tangled conflicts and complex developments two stand out to such a degree that they must command our attention here. The first was the great clash between the spiritual and temporal authorities, both of them charged in overlapping ways with the rulership of Christian society. Affiliated with that conflict was the ascent of a monarchical papacy to a position of great prominence on the European political scene. The second was the subsequent growth in the comparative ambition, strength, and importance of the national monarchies of Europe, notably those of France and England, both of them, by the end of our period, forging ahead on a course destined to bring them into almost inevitable collision with papal aspirations.

Enjoying as he did the enthusiastic support of the emperor Henry III (1037–56) who had appointed him, Leo IX (1049–54), the pope who in definitive fashion succeeded in bringing the movement of ecclesiastical reform to Rome itself, did not contest the degree of control that the emperor, even more than the kings of France and England, continued to exercise over the higher churches within his empire. There is nothing noteworthy about that. As we saw in the previous volume, the religious character of kingship and the long-established custom of royal control over the higher church offices,

bishoprics, and abbeys alike were by then deeply rooted in social custom and ecclesiastical tradition. What is noteworthy however, and historic too, is the fact that in the 1050s and 1060s some of those surrounding the pope, discouraged by the degree to which their reforming efforts to eliminate clerical corruption and ecclesiastical disorder were persistently being impeded by the deleterious effects of lay control, finally committed themselves to questioning that custom and attacking that tradition. Some, indeed, were beginning to proclaim, and with truly revolutionary audacity, that the days of “priest-kings and emperor-pontiffs” were past; still more were gradually edging toward the conclusion that the clergy had to be freed from all lay domination if the church was ever truly to be reformed.

It was only, however, in the troubled years after Henry’s death in 1056 that the popes themselves were moved to embrace a less gradualist and more radical approach to the urgent question of reform. The troubled royal minority had left the church at Rome bereft of effective imperial protection, thereby giving the turbulent Roman nobility the opportunity to regain control over the making of popes and forcing the papacy, as a result, to seek a measure of security by concluding an alliance with the new Norman rulers of southern Italy and Sicily. The sequel to this shift in the plight and posture of the papacy was the disastrous clash between papacy and empire which broke out at the start of 1076. At that critical moment a young German king, Henry IV (1056–1106), who had reclaimed much of the power once wielded by his father but had openly revived the practice of simony (or sale of ecclesiastical offices) which his father had eschewed, was confronted by an experienced, committed, and unbending reformer-pope, Gregory VII (1073–85), who, with great single-mindedness and intensity of purpose, had brushed aside the pleas of the moderates and gradualists among church reformers with the fateful (if scripturally inspired) words “The Lord hath not said ‘I am Tradition’ but ‘I am the Truth.’”

The bitter struggle that ensued marked no more than the dramatic beginning of several centuries of intermittent struggle between papacy and empire, struggle that came in time to be paralleled by analogous moments of tension and strife between popes and the rising national monarchs of Europe. The struggle with the empire reached its peak in the mid-thirteenth century but was still able to generate a pallid harmonic as late as the early fourteenth century when popes and emperors alike had lost much of their former luster. After the initial great clash and over the course of the centuries, shifts periodically occurred in the precise points at issue, as also in the particular arguments the two sides were moved to deploy and in the strategy and tactics they were led to pursue. But at the heart of the conflict as it ultimately developed lay the enduring and fundamental fact that the emperors and popes both saw themselves as the rightful custodians of the ideal of universal leadership in the unitary Christian society that was the legacy of late antique Rome to the medieval world and which, from the twelfth century onward, a

renewed acquaintance with Roman law both fostered and intensified. Close to its heart lay also the related claim, advanced by both, to control the ancient capital of Rome itself and, beyond it, the territories of various provenance stretching across central Italy to the old Byzantine capital of Ravenna on the Adriatic that were destined eventually to be consolidated more or less effectively into what we know as the Papal States. The papacy could hardly abandon claim to those territories without losing its independence of action. But it was also a claim that across time became increasingly important to the emperors as the bases of their power in Germany were progressively eroded by the rise of a feudalized nobility increasingly impatient of any sort of effective monarchical control.

After two hundred years and more of intermittent conflict and by the closing years of the thirteenth century, the papacy appeared finally to have won the battle and triumphed over its imperial adversaries. At the end of a bitter and compromising struggle Pope Innocent IV (1243–54) had well-nigh succeeded in destroying in Italy an imperial authority that had already been marginalized in Germany. Though the empire survived, it did so as a loose confederation of increasingly autonomous principalities, fiefdoms, and towns in which the effective power of the emperor depended less upon his possession of the imperial office than upon the dynastic territories belonging to him personally as yet another (and not necessarily the most powerful) of the German magnates. The fate of Germany as also of Italy was thenceforth and until the nineteenth century to be one of political fragmentation, and it was the popes who emerged as the heirs to the legacy of Roman universalism. By now fully-fledged sacral monarchs, having long since adopted the ancient Roman imperial title of *pontifex maximus* (supreme pontiff) and having already begun to monopolize that of Vicar of Christ (borne earlier by bishops, kings, and emperors alike), they also adopted many of the appurtenances of imperial splendor and not a few of the prerogatives of imperial office. Equating, moreover, the pope with the Roman emperor and the cardinals—his chief advisers since their appointment in 1059 as the papal electors—with the members of the Roman Senate, ecclesiastical lawyers were quick to place the revived Roman law at the service of the papal power of jurisdiction (or government), extending its reach and refining the modalities of its exercise, but doing so, it should be realized, at the expense of transforming its nature. What ensued was a thoroughgoing politicization of ecclesiastical affairs and a substitution for papal leadership *within* the church of a species of papal kingship *over* the church—a form of monarchy, that is, not only over the church conceived in its narrow sense as the international and hierarchically ordered body of clergy, but also in the broader sense denoting the whole of Christian society, few segments of which were left altogether untouched by the increasingly vigorous assertion of papal authority.

It is true that the realities of papal power in no way matched the theoretical claims to supreme authority over temporal rulers and in temporal affairs that



some of the popes and their propagandists did not hesitate to advance during the High Middle Ages. Nor, for that matter, were even the most unambiguously and aggressively *political* of their actions necessarily based on anything so abstract or general as those theocratic claims. During this period, nonetheless, and in the absence of any rival political authority that could effectively claim to be truly universal, the popes did succeed to an impressive degree in exercising a form of universal leadership in Christian Europe. In the late eleventh century, having first encouraged the Christian princes of Spain in the early days of their struggle to liberate the peninsula from Muslim rule, the popes had gone on to place themselves in the vanguard of the forces of European expansionism. They had inspired and sponsored a crusading movement that succeeded first in establishing a Christian foothold in Palestine and Syria and then, later on, a Latin empire pivoting on Constantinople. The crusading states and that Latin empire both proved to be more ephemeral than the embittered schism between the worlds of Latin Catholicism and Greek Orthodoxy that the brutal establishment of that Latin empire helped perpetuate. But papal sponsorship of the further crusading effort directed against the pagan Prussians had more lasting effect in that it succeeded in drawing much of northeastern Europe into the orbit of Latin Christendom. Of similarly lasting import, so far as the containment of internal heresy was concerned, was the papal establishment of inquisitorial machinery.

Something similar may be said of several developments, Europe-wide in their scope, that others had initiated but that the papacy had moved to encourage and support. Notable among them was the emergence in the late twelfth and early thirteenth centuries of the novel corporate institutions of higher education that came to be called “universities.” Granting degrees testifying to the successful completion of a formal course of studies and recognized as valid throughout the world of Latin Christendom, these institutions became the site of a great intellectual flowering. Notable, too, were the activities of the new orders of mendicant “friars,” which pursued a new form of monastic life that came rapidly to be very closely associated with the papacy. Of these, the Dominicans (or Order of Preachers) came to staff the inquisitorial machinery that the papacy had set up to combat the rise of religious heterodoxy and, in a more benign vein, evolved into a very learned order destined to produce a truly impressive array of distinguished philosophers and theologians. The Franciscans (or Order of Friars Minor), on the other hand, while they, too, rose to prominence in intellectual circles and university life, did a great deal also to bring the message of Christian hope to the new unchurched poor, the growing population of town dwellers for whom the existing parish structure had failed to provide.

When the needs of the early church had demanded it, it had been the emperor Constantine who in 325 convoked the ecumenical Council of Nicaea, presided over its deliberations, and approved and promulgated its decrees. It is of more than symbolic importance that when the needs of the medieval Latin

church demanded it, it was Innocent III (1198–1216), by general consent the most distinguished of medieval popes, who in 1215 summoned and played the dominant role at the Fourth Lateran Council, the first of the two most important general councils of the medieval Latin church. More than any recognizably “political” entity (in the narrow sense of that term), it was the papacy, then, that in the centuries subsequent to the Gregorian movement inherited and embodied the old Roman ideal of universal empire, exploited its legacy, and perpetuated its memory. So far as papal hegemony goes, however, the Fourth Lateran Council also represented something of a “peak moment.” As early as 1245, during the course of its immediate successor, the First Council of Lyons, disturbing signs of trouble to come made their appearance. That council, it is true, and in this like its great predecessor of 1215, bore eloquent witness to the pope’s supreme legislative authority, and it did so in striking fashion. Despite some misgivings, it also witnessed the solemn judgment and deposition of the emperor Frederick II (1212–50), whose combination of the imperial title with the kingship of Sicily and whose assertion of authority in Lombardy successive popes had seen as an intolerable threat to their own territorial independence at Rome. No bishop rose at the council to the emperor’s defense. The disposition of the kingdom of Sicily was left to the pope and that of the imperial title was left to the German electors. His formal deposition notwithstanding, Frederick continued to rule until 1250. But with his death in that year, followed in 1254 by that of his son Conrad, an unprecedented interregnum of almost a quarter of a century ensued in the empire.

In some ways, no doubt, the outcome was, for the papacy, a great triumph. But some distressing signs pointed to a gloomier future. The Council of Lyons met during a six-year exile of pope and curia not only from Rome but also from Italy; it was forced to hear a formal appeal from its sentence to the judgment of a future pope and future general council; and it received a protest from a group of English noblemen against the papal grant of English benefices to Italians. Though unsuccessful, this protest, with its quasi-nationalist overtones, is particularly significant. It came in the context of other grievous complaints from such unimpeachable sources as the saintly Louis IX of France (1226–70) and Robert Grosseteste, the great bishop of Lincoln (ca. 1168–1253), concerning the burdens that increasing papal taxation and papal provision of candidates to benefices was imposing on the provincial churches of Latin Christendom. Complaints, indeed, were being voiced about the mounting disorder in the whole traditional system of episcopal governance caused by the increasing centralization of ecclesiastical administration in the hands of the papal monarch at Rome. For well over a century the clergy of the local churches in the empire and several European national kingdoms had by and large welcomed the extension of papal power into their ecclesiastical provinces, and by their own petitions and appeals to the papal court they had done much to stimulate and accelerate that process. Nor did they necessarily

cease to do so now; throughout the later Middle Ages they were to continue their bombardment of the papal curia with petitions for privileges, preferments, and exemptions from one or other aspect of local ecclesiastical jurisdiction. But from this time on evidence of local clerical opposition to papal policy begins to mount—evidence of bodies of clergy so disgruntled with Rome as to be willing, in moments of crisis, to side with their national rulers against the pope.

All of this was to come to a head during the opening years of the fourteenth century. The downfall of Frederick II and of his Hohenstaufen dynasty, followed by the onset in the mid-thirteenth century of a great imperial interregnum, had marked the end of any truly effective imperial authority. But although the old imperial threat to papal independence had been vanquished, there was no lack of potential new threats to replace it. Had Boniface VIII, when he became pope in 1294, had the eyes to see the situation as clearly as we can see it in retrospect, he would have realized that in his own day the power, prestige, and pretensions of the French and English kings had risen to such a degree that they now posed a threat not only to each other but also to the smooth operation of the whole machinery of fiscal and jurisdictional control over the international church which the papacy had succeeded in constructing during the two centuries preceding. Blinded, however, by his own universalist imperial pretensions, Boniface lacked the eyes so to see. He failed, accordingly, to grasp the nature of the potential threat posed by the newly ascendant national monarchies. The policies he adopted were fated to heighten rather than to assuage the dangers that now confronted him. And the clash with Philip IV of France that ensued, precipitating a vivid effervescence of polemical and publicistic writing, was destined to usher in yet another new era in the developing history of Western political thought. With that great clash, then, we will appropriately bring to a close this volume devoted to the political thinking of the High or Central Middle Ages.

## 2. The Christian Commonwealth (i)

### **Regnum vs. Sacerdotium —*the Struggle for Control***

The king ..., seeing that his schemes had been divulged, as was evident to every one, laid aside his ferocity, and approached Canossa clothed in dove-like simplicity. And, by suffering for several days with bare feet on the snow and ice, he deceived all the less wise, and from the venerable Gregory, who, nevertheless, was not ignorant of his tricks, he obtained the absolution which he sought, the Lord's sacrament taking a part in the celebration of the mass in this manner. For he made him a participant in the divine supper in the presence of the bishops, abbots, religious clerks, and laymen in this way, so that if the king had humiliated himself in mind as in body and believed him to be rightful pope, that he himself had been excommunicated after the example of Photius and Diocurus, and that he could be absolved through this sacrament, the supper would be to his salvation, but otherwise, Satan would enter him after the host. What more? When the mass had been celebrated they had dinner together. Then he and all those absolved from the excommunication were commanded to avoid all association with the excommunicate. But there are some who say that he swore to the pope his life and his limb and his honor. But I do not at all affirm what I do not know.

*The Book of Bonizo to a Friend*

BY THE LATTER HALF of the nineteenth century the name “Canossa” had long since become a piece of shorthand, symbolizing for Germans of strongly nationalistic bent nothing other than the abject humiliation of a German emperor and, indeed, of the German national spirit at the arrogant hands of a foreign religious potentate. When in May 1872, then, Otto von Bismarck, chancellor of the newly and proudly unified German *Reich*, proclaimed to the Reichstag that “we will not go to Canossa,” it seemed no more than appropriate that he should do so when launching the so-called May laws aimed at asserting state control over Roman Catholic schools and over the education and appointment of Catholic priests. These constituted the intensive legislative program that initiated the bitterly protracted conflict between the German government and the papally led church that is usually referred to as the *Kulturkampf*.<sup>1</sup>

It is only by dint, of course, of a casual anachronism that one could assume a convincing symmetry to exist between the events of 1872 and those of 1076. Humiliated at Canossa the emperor Henry IV (1056–1106) may doubtless have been, but it is hard not to conclude that he must have thought it a small

price to pay for the success of what amounted to a shrewd tactical maneuver. For by intercepting the pope in the guise of a penitent, he had succeeded in driving a wedge into the ranks of his hitherto united enemies, threatening and momentarily sundering the alliance that had arrayed against him not only the pope, who had excommunicated him and taken the unprecedented step of declaring him deprived of his royal office,<sup>2</sup> but also the German magnates both lay and clerical who were alarmed at his growing power. And however complex the concatenation of forces at work in German's later *Kulturkampf*, those at play in the great eleventh-century conflict between pope and emperor were even more complex and are even harder to disentangle.

That earlier upheaval, which, punctuated by fits and starts, stretched across the half century from 1076 to 1122 and has gone down in history under the somewhat occluded title of "the Investiture Contest," has been the focus across the centuries of an enormous amount of attention. And that itself has heightened the challenge involved in any attempt to interpret it. The mind-numbing volume of historical commentary thus generated, the degree to which it has served as a sort of intellectual screen onto which historians have been tempted to project issues native less to the eleventh century than to their own era, the distorting presence in the older histories of national and confessional allegiances, and, by way of reaction, the inhibited sobriety evident in the more recent work as historians have attempted to respond more forthrightly to the uneven and often fragmentary nature of the surviving evidence as well as the opacity of the terminology traditionally deployed in the attempt to marshal that evidence—all of these factors have conspired to make the achievement of any stable overall consensus on the array of issues involved in the conflict unusually difficult of attainment.<sup>3</sup>

By way of illustrating the type of challenges involved, allusion to one comparatively recent interpretative departure must suffice. It was traditional to view the contested practice of lay investiture as central to the whole protracted conflict to which, after all, its name had come to be attached. What that practice involved was a ceremony effecting the conferral of a bishopric or abbacy by a lay ruler on a candidate for high ecclesiastical office. Beginning with the words *accipe ecclesiam* (accept the church of), the ceremonial conferral of office culminated with the bestowal on the candidate of the ring and crozier, the symbols of episcopal or abbatial authority. Significant enough, one might think, and especially so as Pope Gregory VII (1073–85) is himself recorded as having condemned the practice in 1075, 1078, and 1080. But some time ago the English historian Z. N. Brooke was moved to question its centrality to the whole conflict.<sup>4</sup> Similarly, and of more recent years, H. E. J. Cowdrey has argued that it was only after 1078 that lay investiture "as an abuse in itself" came to play "a prominent role in... [Gregory's]... purpose of securing the churches concerned."<sup>5</sup> Further than that, Rudolf Schieffer, calling into question the very existence of an unambiguous papal prohibition of lay investiture prior to 1078, has made a plausible (if not altogether conclusive)

case for rejecting outright the notion that the practice played any decisive role at all in the initial breach in 1076 between Henry and Gregory.<sup>6</sup> I cite this contested issue simply to underline the fact that some of the questions about the nature and course of the Investiture Contest still outstanding are really quite fundamental. Into all of these interpretative intricacies, however, we cannot enter here. Instead, and moved in this by the work of Gerd Tellenbach, I propose to begin by seeking broader ground and by going back to the crucial years between the death of Pope Leo IX in 1054 and Hildebrand's ascent to the papal throne as Gregory VII in 1073.<sup>7</sup> Those were the years during which the earlier harmony prevailing between emperor, pope, and church reformers at large began to be punctuated by moments of harsh dissonance, and the great question of what constituted the right order in Christian society began to emerge as the basic, overarching, and divisive issue of the day.<sup>8</sup> That question, it has to be realized, was itself an unstable compound of three related but ultimately discrete subquestions. First, the question of the relative positioning of pontifical emperor and monarchical pope in Christian society at large; second, the question of what was henceforth to be the proper role of the bishops within the smaller world of a clerical hierarchy dominated increasingly by a regal papacy; third, in the still smaller world of the Roman church (that is, the church at Rome), the question, as it were, of its own constitutional makeup, of the degree to which the prerogatives of the newly empowered College of Cardinals could legitimately trench upon the increasingly monarchical prerogatives of the pope himself. None of these issues was to be fully resolved in the eleventh and twelfth centuries, and the failure fully to resolve them had consequences that were to be felt for long centuries thereafter. The second question, indeed, has remained in play right down into the present century and still awaits a definitive answer.<sup>9</sup> Although it is the first of the three questions that has to be the principal focus of our attention in this chapter, we will be called upon from time to time to comment, however briefly, on the other two.

## **The Emergence of the Question of Right Order in the Christian World**

From the year 1048/49 when the German emperor Henry III (1037–56) installed as pope Leo IX (1049–54) a kinsman and fellow advocate of moral reform in the church, the papacy placed itself in definitive fashion at the helm of the reforming movement. That movement, having been regional in origin and scope, now came to extend to the church at large. Its foremost goals continued to be twofold. First, the elimination of clerical fornication and the rigorous enforcement of canonical regulations dating back to the fifth century and discouraging the marriage of clerics in major orders. Second, the stamping out of the so-called simoniac heresy, which was given an extended meaning to cover not simply the buying and selling of ecclesiastical office but

also the offering or promise of favors or some other quid pro quo in exchange for an appointment.<sup>10</sup> To these Leo often added in relation to bishops the further demand for their free election by clergy and people.<sup>11</sup>

In pursuit of this reforming task Leo gathered around him as officials among the clergy resident at Rome a group of truly dedicated reformers, prominent among them Boniface of Albano; Hugh the White; Humbert of Moyenmoutier; Frederick of Lotharingia, the future pope Stephen IX; and Hildebrand, the future pope Gregory VII. In earlier times cardinals had been charged with the performance of duties that were largely liturgical and ceremonial in nature in the principal Roman churches. From this time forward, however, they came to be charged also with the role of counselors to the pope and leading administrators within the Roman church. That proved to be an innovation of great significance. It led across time to the emergence of the College of Cardinals as a stable, enduring, and increasingly powerful corporate institution.

To the task of reform Leo himself brought not only personal integrity, deep spirituality, high energy, and passionate commitment; he also cherished a markedly elevated conception of the papal dignity and of the prerogatives attaching to the papal primacy. In this latter respect, his views were redolent of the “high papalist” vision shared by his great predecessors Leo I, in the fifth century, and Nicholas I, in the ninth.<sup>12</sup> Commenting famously on the fact that Christ had promised Peter that his faith would not fail and charged him to confirm his brethren (Luke 22:31), and arguing that by virtue of that great promise Peter’s papal successors were charged with the guardianship of the faith, he wrote that “the faith of Peter was the faith of the church.” That, he added,

No one denies except the one who openly attacks these words of Truth. For just as the whole door is ruled by the hinge so is the advantage of the whole church determined by Peter and his successors. And just as the immobile hinge continues to open and close the door, so, too, Peter and his successors exercise free judgment concerning the entire church... since the supreme See is judged by no one.<sup>13</sup>

His own “high papalism” notwithstanding, during the course of his energetic pontificate Leo IX appears to have had no real misgivings about working hand in glove with Henry III to advance the cause of reform. And for some among the core group of reforming leaders at Rome this older ideal of close collaboration in ecclesiastical matters between emperor and pope continued for some years to be the reigning ideal. Certainly among the fragmentary surviving materials revelatory of the attitudes characteristic of those leaders, the writings (letters, reports, tracts) safely attributable to Peter Damiani (1007–72) indicate the degree to which he himself, zealous reformer though he was, remained faithful to that older, and comparatively moderate, reforming pattern. Given the effulgence of his rhetoric, it is sometimes

difficult to be certain about the precise position he is advocating in a particular text.<sup>14</sup> Clear enough, however, is his commitment to the view that in the overall governance of the universal church, the pope and the papal curia at Rome reigned supreme. To Hildebrand as pope-elect in 1073 he wrote, identifying in this pope and papacy: “You are the Apostolic See; you are the Roman Church.” As successor to Peter in the apostolic dignity, the pope is the Vicar of Christ and as such “the universal bishop” (*universalis episcopus*)—a designation that Gregory the Great had declined to embrace.<sup>15</sup> Excelling all men “in honor and dignity,” the pope, a royal figure anointed after the fashion of David, is to be viewed, he says, as “king of kings and prince of emperors” (*rex regum et princeps imperatorum*).<sup>16</sup> And on the analogy of the ancient Roman senate, the cardinals who surround and advise the pope are to be seen as “the spiritual senators of the universal church” (*spirituales senatores sunt universalis ecclesiae*).<sup>17</sup>

In all of this, however, Damiani signals with almost equal clarity the depth of his parallel reverence for the ministerial role of king and emperor, for the divinely appointed nature of the office itself, and for what he calls “the distinguished acclaim of our great king Henry [III].” So far as the latter is concerned, it was his great distinction to have “lopped off all the heads of the multi-headed Hydra of simoniacal heresy with the sword of divine power.” And “the divine dispensation, not ungrateful [for that fact], conferred on him this privilege, which was not thus far conceded to most of his predecessors, that the holy Roman church should now be ordered according to his will and that no one should henceforth elect a priest to the apostolic see without his authority.”<sup>18</sup>

Even when writing in 1065 to admonish Henry IV, Damiani was still at pains to acknowledge in Pauline fashion that kings are ministers of God, and to insist that “just as both powers, the royal and the priestly, are joined to one another in the first place in Christ by the special truth of a sacrament, so too are they mutually bound to one another in the Christian people by a kind of covenant. Each in turn needs the services of the other.”<sup>19</sup> It is true that, in a couple of rather opaque texts that were later to be interpreted as suggesting that the pope’s authority extended in some way into the temporal as well as the spiritual sphere, he spoke, for example, of Christ’s having committed to St. Peter the “keys of eternal life” and the “laws of heaven and earth.” But it seems likely that in such passages he was not concerned to do much more than emphasize the superiority in dignity of the spiritual power to the temporal and the fact that all men, even kings, were subject to it in matters spiritual.<sup>20</sup> In effect, and in Gelasian fashion,<sup>21</sup> he appears to have viewed each power, spiritual or temporal, as being essentially distinct and independent of one another but as being charged, nonetheless, with the duty of mutual collaboration. When he cites the image of the two swords drawn from the Gospel narrative of the Passion (Matt. 26:51–52; Mark 14:48–49; Luke 22:49–51; John 18:10–11) and taken to symbolize the spiritual and temporal



powers, he certainly does not place them both in the hands of the spiritual power. Instead, he speaks of “the sword of the kingdom” and “the sword of the priesthood” and evokes the felicity of those moments when, while both are wielded separately, they are wielded in harmony one with another.

Not all the members of the inner reforming circle, however, proved inclined to align themselves with Damiani’s stance of zealous moderation. Instead, and especially so after the deaths of Leo and Henry in 1054 and 1056, respectively, they began to draw an ever sharper line of demarcation between the clerical and lay orders, to claim for the former what amounted to a monopoly on matters spiritual, and to exile the latter to the despiritualized zone of the merely secular. Clear witness to this is the attitude they eventually came to adopt toward the so-called proprietary-church system (*Eigenkirchenwesen*), a system whereby parishes and monasteries were classified as benefices or property subject to outright ownership by kings, nobles, bishops, and, even, other monasteries.<sup>22</sup> Walter Ullmann credited the Gregorian reformers with having attacked and eventually secured the abolition of that whole system.<sup>23</sup> Had that really been the case, later medieval church reformers would hardly have had to confront the difficulties they did. Despite the damage it clearly did to the integrity of the monastic life and the coherence of diocesan organization,<sup>24</sup> the Gregorian reformers appear in fact to have had no real objection to the ownership of churches by monasteries or monasteries by bishops or other monasteries. How could they, indeed? They themselves and the very monasteries which had nurtured them were caught up in the same proprietary pattern. Reforming popes like Leo IX and Gregory VII themselves possessed proprietary churches and monasteries and seem to have thought nothing of it.<sup>25</sup> What bothered them, rather, was the ownership of such churches by mere lay folk, however noble or even royal their status. That they deplored as yet another profane intrusion by the laity into the sacred sphere that they increasingly regarded as falling within the purview of the clerical order alone.<sup>26</sup> And in the context of their ongoing battle against simoniac practices, that objection was very much in line with their growing inclination to challenge the traditional involvement in clerical appointments of nobility and royalty alike, even if that involved the denial to kings and emperors of their time-hallowed sacral and sacerdotal attributes, their peremptory extrusion from the clerical order, and their assignment, accordingly, to the ranks of the laity.

The anointing of kings had long been accorded sacramental or quasi-sacramental status. Henry III certainly took that fact very seriously, as well as the clerical status it conferred on him. The chronicler Ranulf Glaber implies, indeed, that “Henry must have felt, whenever he bestowed the staff on a bishop or abbot, that Christ was working through him just as through the priest at the celebration of the Mass.”<sup>27</sup> After his death, however, such beliefs came under increasing challenge. And if we look backward from this crucial moment when the old order embedded in Christian society was on the very

clasp of revolutionary change, we can detect in earlier decades the presence of some scattered straws in the wind, sailor's telltales indicative (at least in hindsight) of shifting weather and the coming of the great ideological storm that was soon to break. Already in the late tenth and early eleventh centuries critics like Thietmar of Merseburg, Atto of Vercelli, and Ratherius of Verona had been bold enough to argue that kings and emperors were going beyond the authority that was properly theirs when they appointed bishops and abbots or went so far as to depose a pope. Similarly, in 1046, Wazo, bishop of Liège, and the anonymous *Auctor gallicus* had objected strenuously to Henry III's deposition of popes at the Synod of Sutri.<sup>28</sup> Nor should we overlook Leo IX's own polite refusal, notwithstanding his imperial appointment to office, to consider himself truly pope until he had gone through the traditional formalities of canonical election by the clergy and populace of Rome.

In any event, Leo's successor Victor II (1055–57) was to be the last pope to ascend to the papal throne by way of imperial nomination. In 1059, just three years after Henry III's death and in the context (so far as the papacy was concerned) of a liberating imperial minority and a some-what wavering regency, Pope Nicholas II (1059–61) presided over a historic synod at the Lateran where a step was taken that was destined to be revolutionary in its implications. While reaffirming the principle that popes were to be freely elected, the synod went further and, in order to ensure that that should indeed be the case, it assigned (and restricted) the electoral role to the cardinal bishops at Rome. It left to the Roman clergy and populace at large nothing more than the ceremonial formality of assenting to the choice the cardinals had already made. Further than that, it contrived to do no more than gesture rather vaguely in the direction of an imperial role in the making of popes.<sup>29</sup> And in another canon, edging now beyond the ongoing effort to eliminate simony, the same synod decreed that even if no price was exacted for a church and even if it was conferred freely, "no cleric or priest should in any way obtain [such] a church from laymen."<sup>30</sup>

The latter decree has been the focus of considerable discussion, and its precise import does not turn out to be as obvious as one might easily assume.<sup>31</sup> Nor does it seem that any attempt was made to enforce it. Along with the papal electoral decree, however, it does stand as yet another testimony to the fact that the desire to effect a sharper separation than had been customary between the respective spheres of the clerical and lay orders was now beginning its move toward the forefront of the reformers' concerns.

To that felt need, Cardinal Humbert of Silva Candida (Humbert of Moyenmoutier) had in the years immediately preceding, and very much in keeping with the edginess of his temperament,<sup>32</sup> given sharper and more intransigent expression. He had done so in his *Libri tres contra simoniacos* (*Three Books against the Simoniacs*). In that work he had dissented sharply from Peter Damiani's moderate, essentially pastoral, and fundamentally

orthodox view that, hateful though the sin of simony might be, the sacraments administered by simoniac bishops, including the ordination of priests, were still valid. Were they not, indeed, confusion and disorder would reign in the church. To that position, Humbert had not hesitated to respond in (unwittingly) Donatist fashion by denying the validity of sacraments administered by clergy of immoral or unworthy behavior.<sup>33</sup> He argued, accordingly, that the purchased consecration of a simoniac bishop was simply null and void. That bishop was, in fact, no more than a pseudobishop and the priests he purported to “ordain” no more than pseudopriests.<sup>34</sup> That position was radical enough in itself, but in the same work he went even further. Thus, however hallowed it might be by tradition, the sacral character of kingship he simply chose to ignore. For him, it seems clear, the king was nothing other than a layman.<sup>35</sup> Some, he said, in assessing “the merit and power of the priestly dignity,” prefer “the secular powers to the priestly like sun to moon.” But that is a misreading of their respective positions. If one truly wishes “to compare the priestly and royal dignities in a useful and blameless way,” one should rather say that “the priesthood in the present church is analogous to the soul and the kingship to the body.” That they need each other is beyond doubt. But “just as the soul surpasses and commands [the body], so too the priestly dignity surpasses the royal or... the heavenly dignity the earthly.”<sup>36</sup>

What exactly one is to conclude from such affirmations of sacerdotal superiority is not altogether clear. But if in another passage Humbert insists that neither clergy nor laity should intrude into the other’s domain, it is hard not to conclude that what is in the forefront of his concern is less the behavior of the clergy than the failure of the laity to confine themselves to the disposition of secular matters.<sup>37</sup> He is eloquent in deploring the upside-down nature of things and the degree of disorder that had been introduced into the church. Instead of election by the clergy preceding lay approbation in the making of bishops, “the secular power is first in choosing and confirming.” “Those promoted in this fashion,” he says, “are not to be viewed as bishops,” for the mode of their appointment is topsy-turvy; “what ought to be done last is done first and by those to whom the matter does not belong.”<sup>38</sup> Further than that, and here he breaks new ground for the reformers, the very ceremony of lay investiture itself can no longer be tolerated. It denies to clergy and people any real electoral power, and to the metropolitan whose duty it is to consecrate the candidate it accords no right but that of acquiescing in the whole sorry arrangement. Beyond that, and in spiritual terms even more damaging, a layman who invests a man with episcopal ring and crozier, thereby arrogating “all rights of pastoral care to himself,” is nothing less than a profane intruder into the sacred mysteries and matters sacramental. For how on earth can it “pertain to lay persons to distribute ecclesiastical sacraments and episcopal or pastoral grace, that is to say crozier staffs and rings, *with which all episcopal consecration is principally effected and by which it functions and is sustained.*”<sup>39</sup> Ring and crozier, it seems, were not to be

viewed as mere *saecularia*; they were sacred symbols and effective sacramental signs, witnessing eloquently to the belief that the bishopric as a whole belonged to the realm of *spiritualia*.

That belief gave the lie to those contemporaries who denied accusations of simony by arguing “casuistically” that “they do not buy the blessing which one receives through the grace of the Holy Spirit, but simply the *res ecclesiarum* or the property of the bishop.” For “it is evident in the Catholic Church that the one cannot exist without the other. Or can there be fire without fuel?”<sup>40</sup> The early reformers, it seems, were “quite convinced that office and endowment formed an indivisible unity like body and soul.... The sacred character of the lands, as the possessions of Christ and the saints, was strongly emphasized.”<sup>41</sup>

For the emperor Henry IV, once he entered into his majority, this whole complex of issues understandably fell into territory that was nonnegotiable. That that should be so is hardly surprising given the central role that bishops had long since come to play as counts and imperial officials in the temporal government of Germany and northern Italy. For the emperor to lose control altogether of the appointment of bishops or, at least, of a preponderant role in their selection would have threatened the very structure and established norms of imperial government.<sup>42</sup> In these early years, however, no real effort appears to have been made to give any teeth to such reformist reservations or to translate into day-to-day practice concerning episcopal or abbatial appointments the rigorist strictures to which Cardinal Humbert had given voice. The paucity of contemporary references to the work and its slender manuscript tradition suggest indeed that Humbert’s *Adversus simoniacos* can hardly have been widely read in the years immediately subsequent to its composition. And almost two decades were to elapse before views cognate to his were to become ascendant in reformist circles. But that duly noted, I do not think it warranted to dismiss his ideas as being no more than “a dead letter” during those decades.<sup>43</sup> If during those years Henry IV continued to choose and invest bishops in the imperial church, the reaction of contemporary popes to that practice has well been described as one of “*de facto* tolerance [though] coupled with reservations in principle.”<sup>44</sup> Those reservations, it turns out, were more or less aligned with the radical views which Humbert himself had expressed. In 1075, moreover, two years after Gregory VII became pope, he appears to have signaled his intent now to act on the principles involved.<sup>45</sup> And by 1078 and 1080, when he himself came to condemn the practice in unambiguous terms, it is clear that lay investiture had come for him “to epitomize in itself the uncanonical interference of laymen against which, in his view, the church had always in its authentic legislation striven.”<sup>46</sup> But by that time, after a barrage of mutual condemnations and the reciprocal promulgation of sentences of deposition from the high offices that they respectively held, pope and emperor had come to be locked in a titanic struggle for supremacy.

It would be at once both anachronistic and misleading to refer to that struggle as one between “church” and “state.” By this time Christian society had long since come to be conceived in unitary terms. In this era, *regnum* and *sacerdotium*, kingship and priesthood, can best be understood on the analogy of the different branches of government in a modern political society committed constitutionally to the separation of powers. Moreover, by the time the conflict reached peak intensity, many of the German nobility, nervous about the growth of Henry IV’s power and looking, accordingly, to their own political interests, had aligned themselves with the papal side. At the same time, most of the German bishops, royal appointees all, had arranged themselves on Henry’s side and against the pope. By 1080, when he renewed his prohibition of lay investiture, Gregory VII had finally thrown his support to the rival king Rudolph, whom the nobles of the opposition had chosen. And by that same time Henry, for his part, had engineered the election of an antipope. In effect, the whole struggle can best be understood “as a vast civil war affecting all segments of a united and indivisible Christian society.” It was to be a struggle fraught with revolutionary consequences, and the revolution in question was to involve the ultimate “success of the popes in substituting themselves for the emperor as the supreme authority in that society.”<sup>47</sup>

It did not fall to Gregory VII himself to achieve that success. In 1085 he died in exile, an apparent failure. But if he was not the “architect or builder... of the papal monarchy of the central Middle Ages,” by virtue of the breadth of his vision and the implacable determination he brought to its realization he has well been described as its “towering forerunner and prophet.”<sup>48</sup>

## **Gregory VII and Henry IV: The War of Movement**

Forerunner and prophet, then, a leader possessed of determination and vision, Gregory’s determination sprang from who he was and what he had experienced in the course of a very full life. Neither speculative by temperament nor systematic in his thinking, his deportment during the long struggle to vindicate reforming principles was not characterized by any sort of unyielding inflexibility. The moderation he showed in his dealings with William the Conqueror in England bears witness to that fact. But he was, nonetheless, a man in whom passionate conviction was wedded to high energy. In effect, he was very much the man of action. As an intimate of Leo IX and later archdeacon of the Roman church, by the time he became pope he had been shaped by more than a quarter century’s experience of the exhilarating ups and disconsolate downs of the great drive for reform. He had been shaped, too, by the grinding difficulties the reformers had encountered in the effort to bring change to the long-established pattern of royal and aristocratic control of the church. As a person of deep spirituality he had been shaped, again, by the thoroughgoing immersion in the biblical texts and

selective exposure to the writings of the Latin church fathers (notably those of Gregory the Great) that went with a monastic education and formation of the traditional type. All of these life experiences helped frame the overarching vision of what constituted right order in a Christian society that he brought to the discharge of his papal duties during the course of a truly historic pontificate. At its most unwavering and fundamental, that vision was held together by three complexly interwoven themes.

The first of these was an overriding commitment to vindicating the *libertas ecclesiae*, the freedom of the church universal—not simply a “freedom from” but also a “freedom for.” It involved, that is to say, and in Tellenbach’s classic definition, not only the achievement of what “is justly the Church’s own freedom from secular duties and the influence of the state, but also freedom to carry out its mission, the conversion of the world.” And this last, he adds, necessarily included “the leadership of the world.”<sup>49</sup>

The second theme was the commitment to establish or reestablish the reign of right order in Christian society. That goal clearly necessitated putting beyond the reach of any profane questioning the sharpness of the line that separated the clerical and lay orders, as well as the essential (ontological?) hierarchical superiority of the clerical *ordo* to the lay.<sup>50</sup> So sharp, indeed, was that line perceived to be and so clear that superiority that no room was now left for the old interpenetration of the two orders that had accompanied and underpinned notions of sacerdotal kingship. What was to so many of his contemporaries “the essentially religious character of kingship,” Gregory, it seems, could simply not accept.<sup>51</sup> As early as the Easter Synod of 1059 he had suggested the abrogation of a decree by the emperor Louis the Pious concerning the rule to be followed by cathedral clergy on the simple grounds that “although an emperor and a devout man, *he [Louis] was a layman.*”<sup>52</sup> Later on, in a celebrated letter he addressed to Bishop Hermann of Metz in 1081, and speaking of one of the very lowest of minor clerical orders, Gregory urged him to remember “that greater power is granted to an exorcist when he is made a spiritual emperor for the casting out of devils, than can be conferred upon any layman for the purpose of earthly dominion.”<sup>53</sup> And though expressing what was not for him a characteristic sentiment, he could even go further to dismiss royal power in itself as rooted in human pride and inspired by the devil.<sup>54</sup>

The third theme woven into Gregory’s overall vision was his essentially monarchical understanding of the papal office itself. Here he was picking up on the high papalism of Leo IX and his ninth-century predecessors<sup>55</sup> but extending it even further than they had. If, as a man of action, he was capable of demonstrating a surprising degree of tactical flexibility, he never wavered in his adhesion to the central conviction that he was the vicar of St. Peter “who is alive now in the flesh.” So that “the authority that Christ had conferred upon St. Peter in the New Testament had devolved upon him [i.e.,

Gregory] absolutely by hereditary and inalienable right.”<sup>56</sup> Already in the ninth century papal letters had claimed that the Roman church possessed “a *principatus* over all the peoples,”<sup>57</sup> and Gregory himself now affirmed that the Roman church was the *caput ecclesiae* (head of the universal church), with the various provincial churches being but members.<sup>58</sup> It is clear that the understanding of the pope as “the universal ordinary” was now gaining ground once more and, with it, his right to intervene at will in the affairs of the other, subordinate dioceses of the church. In Karl Morrison’s terms, the tension evident in the church from the fourth century onward between *tradition*, or “the concept of a continuing authentic knowledge,” and *discretion*, or “the idea of spontaneous administrative authority,”<sup>59</sup> was coming now to be so intensified as to approach the breaking point. Like others in his reforming circle Gregory talked often about the need to restore the church’s ancient order. But the word “tradition” occurs infrequently in his letters, and he was always willing to trump it by an appeal to “the truth.” In this connection, Fuhrmann concludes that “papal privilege” for Gregory took “precedence over the law of the universal church.”<sup>60</sup>

Citing 1 Samuel 15:23, Gregory insisted repeatedly in his letters that he who refuses obedience to the dictates of the apostolic see falls into the sin of idolatry.<sup>61</sup> If to St. Peter, and hence to the apostolic see, has been given the power of binding and loosing, that power is not to be hedged around with exceptions. If by virtue of that authorization the pope is empowered to judge and decide matters of a spiritual nature, why would one suppose that that power does not extend to matters secular?<sup>62</sup> In a letter of 1074 written to Sancho, king of Aragon, Gregory could speak of Christ, “the king of glory,” as having established the apostle Peter as “prince over the kingdoms of this world.”<sup>63</sup> And in 1075, in the twenty-seven lapidary affirmations of the *Dictatus papae*, an enigmatic document inserted into his Register, was attributed to the pope a formidable and in some measure unprecedented array of prerogatives. These were set forth in no particular order, but they did pertain not only to the internal governance of the church understood in its narrower sense as the international body of clergy, but also to the governance of Christian society at large.<sup>64</sup>

Thus in relation to the former it stipulated among other things that nobody is to be called a Catholic who is not in conformity with the Roman church, which has never erred (cc. 26, 22), that the pope alone is rightly to be called “universal” (c. 2), that he alone can “enact new laws according to the needs of the time” (c. 7), that he can unite or divide dioceses (c. 7), can transfer, depose, or reinstate bishops (cc. 3 and 13), can do so even without calling together a synod (c. 25), that without his order, for that matter, no synod might be called general (c. 16), that in such a general council his legate, even if a lower grade, was to take precedence over all the bishops (c. 4). And so on. While, in relation to the latter, that is, to the governance of Christian society at large, it is declared that the pope’s title is “unique in the world” (c. 11), that



he alone may use the imperial insignia (c. 8), that while he himself may be judged by no one (c. 19), in him reposes the power to absolve subjects of unjust rulers from their fealty (c. 27), and that he may depose emperors (c. 12).

Put as bluntly as they are, the claims advanced in the *Dictatus papae* are startling ones, and the authorship and precise status of the document itself remains uncertain.<sup>65</sup> That notwithstanding, Gregory did go on to act in alignment with many of them, and he did so in his relations both with the bishops and with the German emperor himself. In his letter to Bishop Hermann of Metz, which was written in 1081 after his second deposition of Henry IV, he mounted an interesting defense of at least some of those actions. What is most revealing about that defense is the untroubled (perhaps even unreflective) transition from more conventional claims for the superiority of sacerdotal pope to lay king in matters spiritual to the unprecedented insistence on an hierarchical superiority of pope to king in temporal matters too, so that the former had the right not only to excommunicate the latter but also to depose him. Similarly revealing is his misreading of some of the crucial historical incidents that he marshals in support of his claims. Thus his representation of the deposition of Childerich III, last of the Merovingians, in 751 as having been effected by the pope is, of course, a misrepresentation.<sup>66</sup> Similarly, his simple assumption that Ambrose of Milan in excommunicating the emperor Theodosius was not merely acting in spiritual and pastoral fashion to correct an erring Christian individual, but was asserting instead some sort of hierarchical superiority over the emperor in his official capacity.<sup>67</sup> Yet again, his deployment in support of his own far-reaching claims of words drawn (loosely) from Pope Gelasius I's celebrated letter of 494 to the Byzantine emperor Anastasius, namely, speaking of "the sacred authority of priest-hood and the power of kings," that "the priestly is by so much the greater as they will have to answer for kings themselves in the day of divine judgment," so that "you [Anastasius] are subject to their judgment, not that they are to be subjected to your will."<sup>68</sup> Omitted, however, from Gregory's excerpt from the Gelasian letter are further, and really quite crucial, words which make it clear that for Gelasius the emperor's subjection to priestly judgment pertained not to anything temporal but to "the order of religion," to "matters concerning the reception and right administration of the heavenly sacraments."<sup>69</sup>

Did the omission of those words reflect a conscious intent on Gregory's part to render the witness of Gelasius more powerfully supportive of his own claims by making the earlier pope say what in fact he did not say? It would be easy enough to jump to that conclusion, but the temptation to do so should properly be resisted. And on two grounds. First, in his citation of the text Gregory was following (with some further change) the way in which Gelasius's statement had been rendered in the *Collection in Seventy-Four Titles*, one of the most widely used canon law manuals of the day.<sup>70</sup> Second, it



is clear that Gelasius (in this like Ambrose) was still thinking in a religious-political context marked by duality, one in which it was still simply taken for granted that the ecclesiastical and temporal structures of government occupied separate and distinct spheres. Gregory's world, however, was a vastly different one, and one informed by very different assumptions. Here I am persuaded by the cogency of Tierney's suggestion to the effect that Gregory "seems to have been completely a captive of the conventional presuppositions of his age." The order of things with which he was familiar involved a society in which the political and ecclesiastical were intimately intertwined, composing, in our modern terminology, a species of "unitary church-state." So that "when Gregory read in his old texts of a superiority inherent in the spiritual power, he conceived of it as a superiority within a single unified system of government, involving the hierarchical subordination of one power to the other."<sup>71</sup>

Whatever the case, Gregory's willingness to act in terms of such principles and the driving energy he brought to that task succeeded in generating so much turmoil that it bequeathed to the church a legacy of bitter division and enduring tension that was to be alive and well as late as the fourteenth and fifteenth centuries. That tension was to make itself felt everywhere in the church—from the narrow confines of the Roman church itself, via the universal church considered as the international clerical order, to the broader front of Christian society at large. So far as the Roman church was concerned, it eventuated in 1084 in a split within the ranks of the reforming cardinals, with half of the latter abandoning Gregory and throwing their support to the imperially designated antipope Clement III.<sup>72</sup> And that sorry state of affairs reflected the marked growth in the power of the cardinals and in their corporate importance over the years since the enactment in 1059 of the papal electoral decree.

Peter Damiani, as we have seen, had viewed the cardinals as "the spiritual senators of the universal church" and had referred to them as the body "by whose counsel and judgment the state and discipline of the whole catholic church ought to be governed."<sup>73</sup> By 1084, it seems, the cardinals had themselves become enthusiastic sharers in that proud vision. They were understandably sympathetic to the sweeping claims Gregory had advanced for the preeminence of the Roman church, the leadership role he accorded it among the other regional churches of Christendom, and the incipient centralization of power in the Roman curia that went with that leadership role. Their sympathy reached its limit, however, when they concluded that he was acting in arbitrary fashion and without the degree of consultation with them that a proper respect for their exalted status would have demanded. For it was now their view that "the power of St. Peter resided not in the pope alone, but in the entire Roman See," so that, accordingly, "their privileges were proof against [the arbitrary] will of any pope."<sup>74</sup>

These tensions and divisions within the Roman church were, at least in part, ecclesiological and constitutional in nature. Much the same is true of the analogous divisions that manifested themselves on the level of the universal church itself. Those divisions, surfacing within the ranks of the bishops, led some of them, once outright conflict had broken out, either to reject the pope and side with Henry IV or, at least, to adopt something of a critical stance toward the pope, his claimed prerogatives, and the controversial steps he had taken on the basis of those prerogatives. In so acting their motives were by no means uniform. Some were simply wedded to the ecclesiastical arrangements of yesteryear and to a posture of fierce resistance to Gregory's attempt to impose on the church at large the reforming decrees prohibiting clerical marriage and simony (broadly conceived). Others, however, themselves not unsympathetic with the objectives of the Gregorian reform but deeply respectful of customary norms and the hallowed episcopal tradition, were moved to question and resist Gregory's unflinching exploitation of papal discretionary power and his willingness to reach for a species of papal omnicompetence, administrative no less than legal. Thus when the final break came in 1076, the German bishops assembled at the Synod of Worms, renouncing their allegiance to Gregory and referring to him as "Your Arrogance," accused him of having "taken from the bishops, so far as you could, all that power which is known to have been divinely conferred upon them through the grace of the Holy Spirit, which works mightily in ordinations," and of having sought to "destroy the rights due the whole brotherhood."<sup>75</sup> Noting that the letters which the king and bishops wrote at this time tended to "deal as much with the pope's infringement of episcopal rights and his evil deeds against the bishops" as with the injuries he had inflicted on Henry IV, Tellenbach notes that the central point in the bishops' polemic, as they, too, waged their struggle for right order in the church, was "a conviction" concerning "the independence of episcopal authority" that "has been decisive in all conflicts between episcopatism and papalism."<sup>76</sup>

By that time, of course, with the test case between king and pope being a struggle over whether the papally approved bishop or the royally introduced candidate was to be accepted as archbishop of the see of Milan, the great struggle between king and pope over what was to be considered the right order in Christian society at large had finally been joined. Having earlier in 1075 issued a decree against lay investiture, Gregory followed in December with a stern warning to Henry, enjoining him "to obey the Apostolic See as becomes a Christian king." This led Henry in turn, reacting to what he would later describe as "the Hildebrandine madness," to assemble a council of German bishops that was moved to denounce Gregory as no true pope but a usurper of the papal office. To which Gregory responded by excommunicating Henry and declaring him deposed from his high royal office.<sup>77</sup> The battle lines thus drawn were to shift to and fro during the lifetimes of the two protagonists and, indeed, after their deaths. But so far as the history of political thinking is

concerned, the important immediate outcome was less the evolving strategy and tactics pursued by both sides than the altogether unprecedented outpouring of polemic and propaganda that ensued.

## The Investiture Contest, 1076–1122: The War of Words

Those words were many. The great outflow of polemic ran to more than a hundred separate pieces of writing, themselves voluminous enough, even in part, to fill three large volumes of the *Monumenta Germaniae Historica*.<sup>78</sup> It defies, accordingly, any simple encapsulation. Across time, however, some of the works involved have come to stand out among their fellows, and among the many issues they address, some of the central points they make have come to be deemed worthy of particular emphasis.

On the papal side, listed in chronological order of composition, three works stand out: the *Liber ad Geberhardum* written 1080–85 by Manegold of Lautenbach, the *Liber ad amicum* written in 1085 by Bonizo, bishop of Sutri, and the *Summa gloria* written in the early twelfth century by Honorius of Augustodunensis.<sup>79</sup> On the imperial side, in addition to Henry IV's own letters,<sup>80</sup> four works should be mentioned. Listed chronologically again, they are the *Defensio Henrici Regis* written by Peter Crassus around 1080–84; Wido of Osnabrück's *Liber de controversia inter Hildebrandum et Heinricum* (1084–85); the various tractates, and especially the *De consecratione pontificum et regum* attributed to the author whom we know as the Anglo-Norman Anonymous and who wrote at Rouen around 1100; and the *Leodicensium adversus Paschalem papam*, written by Sigebert of Gembloux around 1103.<sup>81</sup>

Apart from arguments of a historical nature affirming or questioning the accuracy of the precedents adduced by Gregory VII to justify his excommunication and deposition of Henry IV, or similar arguments concerning the right of an emperor to initiate proceedings to bring about the deposition of a pope,<sup>82</sup> the bulk of the argumentation involved swirls about issues pertaining directly or indirectly to the origins, nature, grounding, and reach of royal authority. Here the papalists, while recognizing the ministerial function of the royal office and its ultimately divine foundation,<sup>83</sup> were prone to characterizing its more proximate origins in quite lowly terms, its powers as limited in their reach, and its nature as unambiguously secular. Thus for Honorius Augustodunensis, kingship had established no more than an episodic presence in the life of the chosen people. He points out that before Samuel introduced it into the life of Israel and, again, from the Babylonian exile onward, it was the priesthood that had reigned supreme in Israelite society. Later on, moreover, Christ himself, “true king and priest after the order of Melchizedek,” chose to entrust the governance of his church to the priesthood rather than the kingship. Only after the emperor Constantine had “set the crown of the kingdom on [the head of] the Roman pontiff” did the

church begin to follow the custom of having “kings or judges for secular judgments.” Honorius is careful to emphasize that “to kings... only secular judgments belong” and to affirm, accordingly, that “inasmuch as the soul, which vivifies the body, is worthier than the body, and as spiritual things, which justify secular things, are worthier than secular things, so the priesthood is of greater dignity than the kingship, which it constitutes and ordains.” And if in biblical terms Abel, the shepherd, is said to typify the priesthood, we should not miss the fact that it is Cain, who murdered him, who is taken to typify the kingship.<sup>84</sup>

Manegold of Lautenbach’s argument about origins and limits follows a somewhat different trajectory, but when it comes to kingship it is even less flattering. Even if the office itself is ultimately of divine institution, it is from the people (or the great men of the kingdom) that the king derives his power most immediately. He does so, moreover, via a *pactum*, an agreement or species of contract, by the terms of which he is bound “to repress the wicked and defend the upright.” Should he lapse into tyranny his subjects are released from their bonds of allegiance to him and he forfeits his high office. To illustrate the point at issue Manegold does not hesitate to reach for an example drawn quite unself-consciously from what he refers to as “more base things” (*de rebus vilioribus*), and he blithely compares the tyrannous king with the swineherd who, having been hired to look after the swine, fails to do so, thereby betraying the trust his employee has reposed in him and, as a result, forfeits his job.<sup>85</sup>

A far cry, it may be, from the type of reverence the kings of yesteryear could assume was no more than their due. But, then, to Manegold at least, and the admittedly divine institution of their office notwithstanding, there was nothing really sacred about kings. He does not hesitate to refer to them simply as “secular powers” (*saeculares potestates*), and he vigorously defends the 1078 decree against lay investiture which had consigned emperors no less than kings to the ranks of the laity at large.<sup>86</sup> It is understandable, then, that one of the principal bulwarks thrown up by those (Henry IV himself included) who sought to vindicate the imperial cause was an adamant insistence on the sacrality of kingship and a rejection of the novel Gregorian attempt to sharpen the line dividing the lay from the clerical orders or to relocate it in such a way as to leave emperors and kings on the unambiguously lay and secular side of the equation. It is true that in the letter he wrote in 1076 to the German bishops Henry came close to conceding (at least implicitly) the Gregorian relocation of that crucial line. For he took his stand on what he called “the sufficient duality” symbolized by swords referred to in Luke 22:48, the one he takes allegorically to signify the *regnum*, the other the *sacerdotium*. He conceded that those swords, being two in number, were not properly to be wielded by the same hand. But that, alas, is precisely what the pope, in the grip of the “Hildebrandine madness,” had attempted to do, transgressing thereby the line dividing the two powers, confounding the “ordinance of God”

and “usurping for himself the kingship... [as well as] the priesthood.”<sup>87</sup> Elsewhere, however, and in more conservative mode, Henry took his stand on the traditionally hallowed *rex et sacerdos* platform. It was “our Lord, Jesus Christ,” he said, who “has called us to kingship,” and he denounced Gregory for having dared to touch him, “one who, though unworthy, has been anointed to kingship among the anointed” and, as such, in accordance with the hallowed tradition of the church fathers, to be judged by no man but by God alone.<sup>88</sup> For all his high-flying claims as a champion of justice and vindicator of the *libertas ecclesiae* it is Gregory, then, who stands guilty of having “subverted ecclesiastical order”<sup>89</sup> and having striven “to destroy the dispensation of God.”<sup>90</sup>

Others among the imperialist controversialists took a not dissimilar track. Thus Sigibert of Gembloux, having first argued that the excommunication of a king does not release his subjects from their oath of allegiance to him, goes further and casts doubts on the very idea that kings and emperors are susceptible of being excommunicated in the first place.<sup>91</sup> Again, in defending the customary view that the German king-emperor had by immemorial tradition a perfectly legitimate role in the choice of popes, Wido of Osnabrück is at pains to remind his readers that the king is no mere layman since, by virtue of his royal unction, “he is to be recognized as participant in the sacerdotal ministry.”<sup>92</sup> And, as we saw in the previous volume, the Anglo-Norman Anonymous, mining in the *De consecratione* and his other Tractates the great liturgical texts that had grown up around the sacrament of royal anointing, went further still, elaborating not simply a royal theology but a whole, and exceedingly complex, royal christology.<sup>93</sup>

On the basis of that royal christology, the Anonymous was able to claim that the king was nothing less than “the figure and image... of [Christ] the king,” that is to say, of the latter’s “higher and divine office and nature.” The priest, on the other hand, is but “the figure and image... of [Christ] the Priest,” that is, of the latter’s “lower and human office and nature.”<sup>94</sup> Christ’s divinity, being “greater and higher than his humanity,” so, too, is his royal power superior to his priestly power. On this earth, accordingly, being modeled on the superior power of Christ’s divine nature, the king and his royal power are “greater and higher” than the priestly. As a result, there is nothing at all unjust about the priestly dignity’s being “instituted by the regal or subordinated to it, because in Christ the dignity of the priesthood was instituted by his royal power through which he was equal to the Father.”<sup>95</sup> By virtue of their common unction there is an essential parity among all bishops and no legitimacy attaches to the mounting claims advanced by the bishops of Rome to a position of jurisdictional superiority to all other bishops in the universal church. The lower clergy may well be hierarchically subordinate to their bishops. But “the hierarchy is properly completed *above* the archiepiscopal rank, not by a primate and the pope, but by the sacerdotal king, who is no mere layman but *rex et sacerdos* (king and priest) and *praesul princeps et*

## **The Investiture Contest: Outcome and Long-term Consequences**

Enough has been said, if only by way of illustration, to suggest that the issues thus joined were of a truly testing nature, too testing, indeed, and convoluted in nature to permit of any easy or ready resolution. Even after the two principals had departed the scene (Gregory died in 1085, Henry in 1106), settlement continued to prove elusive. When finally it was reached at the Synod of Worms in 1122, the conflict had gone on, astonishingly and traumatically, for well-nigh half a century. During those years it had dominated the history of the German empire and, at critical moments, punctuated the histories of the national monarchies too. In the process it had surfaced a neuralgic array of issues that were not to be resolved for centuries to come and were destined, as a result, to shape the very contours of later medieval political thinking. About some of those issues the settlement eventually arrived at had nothing at all to say. It was silent on questions pertaining to the internal constitution of the universal church and the role of the bishops in its governance. And it was similarly silent on those narrower issues concerning the constitution of the Roman church and the prerogatives in its governance to be accorded to the members of the College of Cardinals. As a result, and under the lengthening shadow of an increasingly powerful and monarchical papacy, such issues were pushed to the margins of consideration for the better part of two centuries. But they were not altogether lost sight of and were to reemerge powerfully in the fourteenth and fifteenth centuries and, for a while, to occupy center stage in the unfolding drama of constitutionalist political thinking.

As for the central question of right order in Christian society at large and, with it, the role of kingship therein, the settlement arrived at in 1122 did address it. But it did so in narrowly focused fashion and settled, in fact, for a compromise. And that compromise followed the general contours of a similar settlement arrived at earlier with the English and French kings.<sup>97</sup> What all now conceded was something that the early reformers had adamantly rejected: namely, that the bishopric was not (as Humbert had insisted) a single, unitary juridical entity. Instead, it was conceded to be a complex of offices, jurisdictions, spiritual responsibilities, political prerogatives, and proprietary rights, some of them clearly secular and temporal in nature. The preservation of some say in the disposition of the latter was clearly vital if emperors and kings were to succeed in discharging the responsibility they bore for the government of their realms. The ceremony of lay investiture which had become after 1106 the principal bone of contention, the emperor now agreed to abandon. Ring and crozier were to be categorized as *spiritualia* and investiture with them was conceded to be the prerogative of ecclesiastics

alone. So far as bishoprics were concerned, the emperor also conceded the principle of “canonical election and free consecration.” But it was recognized that in Germany he had the right to be present at all such episcopal elections and to require homage and appropriate service from those elected for the *regalia* or feudal lands attaching to the churches over which the bishops-elect were being called to preside. If for some reason the person elected were to prove unacceptable to the emperor, the latter could of course exercise a species of veto over the appointment by declining to accept the electee’s homage. In practice, therefore, at least within the German part of empire, and “free” election to the contrary, the emperor was left with a considerable measure of control over the imperial church and with a say of no little importance in the selection and appointment of its leadership.

The Investiture Contest ended, then, in something of a standoff. The more so if one takes into account the once hotly contested issues that now went unmentioned. No judgment was passed for example, on Gregory VII’s unprecedented claim that popes could depose emperors or kings. Nor was anything at all said about the Gregorian attempt to secularize the royal office, to clericalize kings and consign them to the ranks of the laity. As a result, such sensitive issues were to linger on for centuries as worrisome *quaestiones disputatae*. But the uncertainties that remained as a result to trouble the minds and consciences of medieval people were destined in the long haul to bear considerable fruit. It is true that the sacral dimension of kingship, rather than being totally obliterated during the Sturm und Drang of the Investiture Contest, enjoyed for centuries something of an enduring half-life.<sup>98</sup> Fluctuating it may have been, but it remained powerful enough to be able to draw the medieval papacy itself into its magnetic field and, later on in the sixteenth and seventeenth centuries, to generate a species of decaying autumnal energy in the theory of the divine right of kings. Nonetheless, and at the same time, seeds of doubt about the traditional vision of kingship had undoubtedly been sown, and those seeds went on to germinate in the centuries that followed. In this respect, things were destined never to be quite the same again. If later theorists and court ideologists did prove capable of evoking the divinity that doth hedge a king, they did so with a degree of self-consciousness and a lack of untroubled conviction that would have been altogether alien to those who had preceded them. The Gregorian reformers, it seems, had set in motion a process of desacralization that was destined progressively to tarnish the sacred nimbus with which early medieval Europeans had been so easily moved to adorn and hallow their rulers.

Hand in hand with that process of desacralization, but stemming this time from the indeterminate nature of the outcome of the great struggle, went something of equal significance. Neither empire nor papacy emerged from the Investiture Contest possessed of the unquestioned ascendancy in Christian society to which both, if at differing moments, had clearly aspired. As a result, the two centuries ensuing were destined to be punctuated by repeated episodes



of renewed tension and destructive conflict. In the first volume of this work<sup>99</sup> we saw that the New Testament had succeeded a thousand years earlier in inserting into the unfolding development of political thinking a novel distinction between what Rousseau was later to call “the theological... [and] the political system,” by so doing making “the State no longer one, and... [causing] the internal divisions which have never ceased to agitate Christian peoples.”<sup>100</sup> We saw too, however, and Rousseau to the contrary, that the archaic ideological pattern of theopolitical thinking, successfully transposed into a new, Christian key, had proved robust enough for long centuries to be able to deflect the impact of that novel distinction. Again and again across those centuries, the edge of that distinction had come to be blunted by imperial and (later) papal aspirations to put beyond question the existence of a unitary Christian commonwealth under the leadership either of pontifical kings or monarchical pontiffs. The distinction, indeed, might well have been marginalized altogether had it not come to be linked with, found expression in, and, reciprocally, been reinforced by the gradual emergence in western Europe of rival governmental structures, temporal and ecclesiastical, both of them serving to impose limits on each other’s effective power. And, looking to the future, that was to be true not only of Catholic Christendom but also after the Protestant Reformation in those parts of Europe where Calvinism came to hold sway.

It was with the onset of the Investiture Contest, which initiated the process of clothing theological bone with institutional flesh, that the long centuries of comparatively harmonious ideological accommodation drew to a close. Central to that historic shift was the emergence on the international stage of a monarchical papacy wielding an authority that was unambiguously jurisdictional or governmental in nature, one that called for the progressive elaboration of independent governmental structures of its own. To the distinction between religious and political loyalties that the New Testament had introduced was now added a species of institutional duality which from the late eleventh century onward served increasingly to give that distinction teeth.

We should not permit the sheer novelty of the state of affairs thus engendered to escape our attention. Historically speaking, “there is really nothing unusual,” Brian Tierney has rightly argued, “in one ruler aspiring to exercise supreme spiritual and temporal power. That... is a normal pattern of human government.” What was unusual instead about the European Middle Ages “was not that certain emperors and popes aspired to a theocratic role but that such ambitions were never wholly fulfilled.”<sup>101</sup> The governmental dualism that sponsored this novel state of affairs was doubtless the cause of an immense amount of wasteful and destructive conflict. But it was conflict that marked the birth pangs of something new in the history of humankind: a society in which what we now call the state was gradually stripped of its age-old religious aura and in which its overriding claims on the loyalties of men



were balanced and curtailed by those advanced persistently by a rival authority. That rival authority, in turn, in no less significant a fashion, found its own imperial ambitions thwarted reciprocally by the competing power of emperors and kings. A society that was distinguished, therefore, by a deeply rooted institutional dualism and racked by the internal instability resulting there from.

It was, as a result, between the hammer and the anvil of these conflicting authorities, ecclesiastical and temporal, that political freedoms in the West were eventually to be forged and monarchical ambitions (spiritual no less than temporal) eventually to be chastened. Medieval constitutionalism was to be the product of a host of mutually supportive factors, many of them not at all directly religious in nature. But whatever the strength of those factors, and the historian's uneasiness about counterfactual argumentation notwithstanding, I would argue that without the Christian insertion into European thinking of the critical distinction between the religious and political spheres, and without the instability ultimately engendered by the protracted clash of rival governmental authorities, temporal and spiritual, it is extremely unlikely that the medieval centuries would have bequeathed to the early modern world any legacy at all of limited constitutional government. It is with the other factors that went into the shaping of that crucial legacy that we will mainly be concerned in the chapters that follow and as we move on to engage the developments in Western political thinking that took place in the twelfth and thirteenth centuries. And not least among those developments and the one that will most immediately command our attention was that transformative recuperation of the past that Charles Homer Haskins, the great pioneer of medieval studies in North America, taught us long ago to think of as the "Renaissance of the Twelfth Century."

### 3. Recuperating the Past (i)

#### *Nature and Chronology of the Process*

IF A VIGOROUS development of political thinking took place over the course of the twelfth and thirteenth centuries, its necessary presupposition, and one determinative for the direction it took, was the attainment of a renewed familiarity with the intellectual legacy of Greek, Roman, and Christian antiquity. Similarly important was the intellectual stance that medieval thinkers themselves adopted when they sought to come to terms with that legacy. Both factors, accordingly, must command our attention right at the outset before we move on to engage the political thinking of the era. And the second of these factors being the easier one to underestimate or even overlook, it is properly the one with which we should begin.

#### **Medieval Attitudes toward the Ancient Legacy**

In the opening pages of his novel *The Kite Runner*, a compelling story about coming of age in Afghanistan and the Afghan diaspora, Khaled Hosseini depicts his protagonist as ruminating, more than a quarter century later, over the traumatic childhood incident that had in so many ways shaped (and distorted) the subsequent course of his life. “It’s wrong,” he concludes, “what they say about the past, I’ve learned, about how you can bury it.” “Because the past claws its way out.”<sup>1</sup> And true enough that may well be. Certainly, down through the centuries, and with a striking (if intermittent) persistence, one version or another of its own past has contrived to claw its way out of the grave of communal oblivion and to insert itself, for good or ill, into the interstices of the European imagination. And one should acknowledge that it has done so sometimes in unexpected ways. It is, I suppose, understandable that nineteenth-century German protonationalists should have expressed their patriotic longings and yearnings via a nostalgic evocation of the myths and legends handed down from a supposedly pre-medieval Teutonic past. But it is surely more difficult to explain the strength of the hold exerted by a supposedly classical Greek past over the imagination and aspirations of the eighteenth- and early nineteenth-century German Hellenists. So strong, indeed, was that hold that historians have not hesitated to describe that species of “philhellenic neohumanism” as a “cultural obsession,” or to speak of “‘the tyranny of Greece’ over German intellectual practice,” or even to affirm that the *Antigone* of Sophocles, as a result, “is in this sense a text of nineteenth-century political thought.”<sup>2</sup> And how curious, similarly, is the way in which “the matter of Britain”—the loosely assembled body of Arthurian myth and legend preserved since late Roman times by a subaltern Celtic culture clinging

precariously to life in Cornwall and the mountain fastnesses of Wales—should have come to exert so powerful a hold over the imaginations of French writers like Chrétien de Troyes in the twelfth century and of so many others later on.

Such examples, and they could easily be multiplied, may serve to illustrate and underline the degree to which the engagement of Europe with its own history was far from being a merely passive rediscovery and assimilation of the past. Instead, it was typically an actively selective and transformative reinterpretation in the light of contemporary conditions and ways of thinking of the legends, texts, ideas, exemplars, and other shards of evidence coming down from earlier centuries.<sup>3</sup> This is particularly true of the ways in which medieval people appropriated the legacy inherited from the ancient world. Architectural motifs, poetic forms, literary subject matter, legal principles, metaphysical assumptions even—all were subjected in ways both subtle and profound to a transformative process and transposed, accordingly, into a different and sometimes quite novel key. “They read Vitruvius,” it has well been said, “and built Gothic cathedrals. They read Ovid—and wrote about courtly love. They read Justinian—and founded the constitutional state.”<sup>4</sup>

Scholars in general have often commented on the flexibility characteristic of the ways in which medievals handled the literary texts that had come down to them from the classical past.<sup>5</sup> But historians of political thought, while emphasizing the importance for political thinking of the European reception in the thirteenth century of Aristotelian ethical and political thinking, have not always been sufficiently sensitive to the subtle “rescoring” Aristotelian melodies underwent in the process, or the degree to which they came to be transposed into an essentially Christian (or Christian-Neoplatonic) key. In a classic evocation of the spirit of medieval philosophy at large, Étienne Gilson once observed that

the debt of the Middle Ages to the Greeks was immense and is fully recognized,... [but] the debt of Hellenism to the Middle Ages is as great, and nothing is less appreciated, for even from medieval religion Greek philosophy had something to learn. Christianity communicated to it some part of its own vitality and enabled it to enter a new career.<sup>6</sup>

The observation is one that we ourselves would do well to keep in mind when we encounter the great opening up of political thinking that occurred in the late thirteenth century in the wake of the reception of Aristotle.<sup>7</sup>

## **Discovery and Rediscovery: Chronology of the Process**

The old humanist claim that the recovery and reappropriation of classical learning had had to await the triumphs of the Italian Renaissance in the fifteenth and sixteenth centuries contrived to linger on in pedagogical practice and the public historical imaginary well into the latter years of the twentieth

century. But Charles Homer Haskins's publication in 1927 of his classic *The Renaissance of the Twelfth Century*<sup>8</sup> had long since ensured that such a view of things would be doomed to ending its days on a stubborn species of intellectual life-support system. The twelfth century, as he argued and as others have since confirmed, was a period of intellectual and cultural renewal. It was marked by a great quickening of scholarly energy and intellectual curiosity that led it to a vital and multiform reengagement with the legacy inherited from the ancient world. In common with the Italian Renaissance three centuries later, it "drew its life from two principal sources." First, from "the knowledge and ideas already present in the Latin West" though, like Roman law, lying "dormant, as it were, within Latin culture"; second, from "an influx of new learning and literature from the East."<sup>9</sup>

So far as the former went, and as Haskins himself made clear, it presupposed what has come to be known as the Carolingian Renaissance, a prior revival of Latin learning sponsored in official fashion by Charlemagne and by the ninth-century rulers who immediately succeeded him. For it was that revival which had succeeded in putting an end to the centuries-long deterioration in the quality of European Latinity and to the progressive loss of the literary heritage of ancient Rome. It was a revival very much centered on the imperial court at Aachen, where the Anglo-Saxon scholar Alcuin presided over the Palace School. But so far as the crucial copying and preservation of manuscripts went, it was also a revival furthered mightily by the efforts of the abbots who built up the libraries and the monks who labored in the *scriptoria* of the revitalized Benedictine monasteries that were now broadcast right across the ninth-century Carolingian realms.

Testimony to the importance of this crucial work of preservation and dissemination is one particularly arresting fact. Whereas no more than two thousand manuscripts survive from the entire stretch of history prior to 800 CE, many of them amounting to little more than scraps and fragments, almost seven thousand have come down to us from the ninth century alone. Many of them are written in the clear, more adequately punctuated, and often quite beautiful script developed largely at the monastery of Corbie in France but popularized by the efforts of Alcuin himself. Known as Carolingian miniscule, it was a vast improvement over the well-nigh indecipherable Roman and Merovingian cursive scripts, and in the version revived by fifteenth-century humanists (who may, mistakenly, have taken it to be a classical Roman hand) it survives today in the form of the lowercase letters of our modern print.<sup>10</sup>

It would be hard to overestimate the importance for the revitalization of learning in the twelfth century either of the improved models and standards of Latinity handed down to later students<sup>11</sup> or of the final stabilization and preservation of the Roman literary heritage. For both, the scholars of the ninth century were largely responsible. Of the classical Latin texts known to us today, that of Virgil alone is based upon manuscripts surviving from late

antiquity. All the other texts derive from manuscript traditions that stretch back no further, at the earliest, than the ninth century. More than 90 percent of the classical Latin texts that came to be studied so intently in the late eleventh and twelfth centuries had survived in Carolingian manuscripts. And those manuscripts constitute, in effect, the ultimate basis of most of the printed editions in which we today read those texts.

So far as Roman literature went, then, the classical revival of the twelfth century was less one of discovery than the rediscovery of what had long been known but persistently neglected. And it was selective rediscovery at that. All the texts available to us today had been available to scholars since the ninth century—though some, admittedly, were more readily available than others. The scholars of the late eleventh and twelfth centuries, however, chose to focus intently on some of them while largely ignoring others. Virgil, Ovid, Horace, Lucan, Statius, and, from the late-Roman period, Claudian—all of these came to be the focus of great interest. Among the prose writers, and the one destined to be of the greatest importance for the history of medieval political thought, Cicero loomed especially large. His *De amicitia*, *De inventione*, *De natura deorum*, and some of the *Letters* and *Orations*—all of them were the focus of much attention. Livy's *History*, on the other hand, was largely ignored, Lucretius was not much read, and Tacitus's *Germania* appears to have been virtually unknown. Only in the fifteenth century was its text rediscovered, its very survival having depended on the slender thread of a single manuscript copy.<sup>12</sup>

In the reencounter with the Roman inheritance, however, literature proved to be but part of the story, and a less prominent part than it was to be in the Italian Renaissance later on. Also part of the story was the legacy handed down from the subaltern Rome of Sts. Peter and Paul and the culture of Christian antiquity. For the love of learning does indeed seem to have gone hand in hand with the desire for God.<sup>13</sup> Intimately intertwined with the intellectual renewal of the late eleventh century and twelfth centuries was a transformative intensification of the spiritual vitality of Latin Christendom, in the absence of which the great upheaval of the religious and ecclesiastical spirit that we know as the Gregorian reform could scarcely have occurred.<sup>14</sup> Among other things, this surge of religious vitality reflected a widespread yearning for a renewed faithfulness to the spiritual modalities (real or imagined) of primitive or apostolic Christianity. And that had led in turn to new forms of monastic life, as well as to the emergence of sectarian lay groups anxiously searching, along the borderline of orthodoxy, for traces of the path to spiritual perfection. That quest both presupposed and sponsored an intense perusal of the spiritual legacy of Christian antiquity. In the twelfth and thirteenth centuries, then, the biblical text itself and the writings of the church fathers became increasingly a focus of attention.

Among the church fathers, Augustine's works garnered the most interest,

though a quickening reverence for the teachings of the Greek fathers was to stimulate in the twelfth and thirteenth centuries the provision of new Latin translations of works by Chrysostom, Gregory of Nazianzus, and John of Damascus.<sup>15</sup> In biblical studies themselves, the vigor and creativity of the twelfth- and thirteenth-century exegetical effort belie the dismissive Victorian conviction that the long centuries from the seventh to the sixteenth delivered little more by way of exegesis than “the ‘glimmerings and decays’ of patristic exposition.”<sup>16</sup> By the early twelfth century and in consultation with Jewish exegetes, the “Paris” or revised and standard edition of St. Jerome’s Latin Vulgate version of the Bible had been produced, along with the *glossa ordinaria* or basic standard commentary. As the century wore on, a further exegetical effort was mounted, notably at the school of St. Victor in Paris. There, inspired in part by the northern French school of Jewish exegesis originated by Rashi (d. 1105), Hugh, Richard, and, above all, Andrew of St. Victor focused attention on the historical and literal interpretation of the text. That effort was advanced further in the thirteenth century by the provision of a certain amount of university-based instruction in Greek and Hebrew. From that emerged the crucial generation of Christian Hebraists whose labors culminated in the encyclopedic commentaries of the Franciscan exegete Nicholas of Lyra (ca. 1270–1349). Nicholas was a linguist of distinction, and he was able, building on the exegetical work of the previous century and a half, to bring to his own efforts a direct familiarity with the Hebrew Bible, Midrash, and Talmud, as well as with the work of Rashi and Moses Maimonides (1138–1204). His commentaries became standard and proved to be a vital resource for the theologians of the later Middle Ages, including those who concerned themselves with matters theopolitical.

Another vital resource, and one whose direct impact on medieval political thinking is hard to overestimate, was the creation of an accepted corpus of ecclesiastic or canon law along with the veritable ocean of commentary that came eventually to engulf it. Two distinct factors at play in the late-eleventh century prompted the rise to prominence of canonistic studies. The first was the extensive search of the papal archives and other repositories for texts of the church’s ancient sacred canons. That search appears to have been mounted before and during his pontificate by reforming circles associated with Pope Gregory VII (1073–85). And it may have been indirectly responsible for the rediscovery around 1070 of a hitherto unread copy of the *Digest*.<sup>17</sup> This was a matter of no little importance, for the *Digest*, a summation of the methods and views of the Roman jurisconsults, formed the pivotal section of the body of Roman law collected, edited, organized, and published in the early sixth century by a legal commission which the emperor Justinian had charged with that task. The second pertinent factor in the crystallization of the medieval canon law was the development by the “civilians” or experts in Roman law, and in the wake of the rediscovery of the *Digest*, of a new jurisprudence. For the principles of that jurisprudence came in time to inform the work of the

canonists or ecclesiastical lawyers, most of whom were either themselves trained also in the civil law or, at least, were quite intimately acquainted with it.

Focusing now on this second factor we should note that the fundamental difference between the two laws resided in the fact that whereas the canon law was for centuries a living and growing body, the Roman or “civil” law was, as it were, “a closed revelation,” an inherited body of writing.<sup>18</sup> In addition to the *Digest*, it included the *Institutes* (a textbook for law students), the *Code* (an ordered collection of imperial laws), and the *Novels* (laws which stemmed from Justinian’s own legislative efforts). Together, they came to be known as the *Corpus Juris Civilis*. During the half millennium and more since Justinian’s death, elements of that Roman law had survived in the West in the form of customary norms handed down among the descendants of the Roman population or incorporated in fragmentary fashion in the compilations of law that circulated in the several Germanic successor kingdoms. So far as Roman jurisprudence went, however, there was no real continuity. Or, put more precisely, there was no such continuity “if by ‘jurisprudence’ we understand an intellectually coherent discipline, a mastery of the sources which can give rational guidance to legal thinking—as distinct from professional routine.”<sup>19</sup>

It was in the wake of the rediscovery of the *Digest*, which served to reacquaint medievals with the thinking of such great Roman juriconsults as Gaius, Paulus, and Ulpianus (second to third century CE) that the “new jurisprudence” gradually emerged. It did so at a whole series of schools—among them Paris, Ravenna, and Oxford—but it came to flourish quintessentially at Bologna, where its development was the achievement of four great generations of “civilians.” There, in the late eleventh century, Pepo and Irnerius (the latter referred to later as “the lamplighter of the law”) got the great work under way. In the following century Irnerius’s students, the so-called four doctors—Martinus, Bulgarus, Hugo, and Jacobus—pursued the task further, as, in turn, did their own students and, in the thirteenth century, a fourth generation of glossators, the most celebrated of whom was Azo (d. 1220). Finally, it was Accursius (d. 1263), a student of Azo’s, who synthesized the results of those generations of juristic labor in the great, standard commentary on all four parts of the *Corpus Juris Civilis* which has gone down in history as the *glossa ordinaria*. That gloss was of such importance as often to be included in manuscripts of the entire *Corpus*. In it Accursius not only wrote his own commentaries on difficult passages or seemingly irreconcilable texts but also folded in what he regarded as the most significant of the often divergent opinions handed down by the glossators of previous generations. While the *glossa ordinaria* represented a quite extraordinary intellectual achievement, it by no means put an end to the work of commentary in the European faculties of law. But it did mark the completion of a distinctive stage in that great effort. Subsequent commentators—“postglossators” like Cinus of Pistoia (d. 1336), Bartolus of



Sassoferrato (d. 1357), and Baldus de Ubaldis (d. 1400)—were more prone to producing collections of *consilia*, juristic opinions on specific cases, or to eliciting from university teaching on both civil and canon law a species of *jus commune* or common law that was quite broadly applicable. Broadly applicable, that is, in the sense at least that it could serve for European jurists as a general legal framework or juristic lingua franca.<sup>20</sup>

Canon law, for its part, underwent its own distinctive if related development. And that process quickened during and after the era of Gregorian reform when attention came to be focused on ancient texts and decretals supportive of papal prerogatives. In its development the canon law benefited not so much (despite claims to the contrary) from the dialectical techniques that the philosopher Peter Abelard (ca. 1079–ca. 1142) had boldly extended into theology<sup>21</sup> as from the analogous methodology which the early civilians had deployed in their own attempt to cope with the inconsistencies they found embedded in the texts of the *Digest*. During the course of the tenth and early eleventh centuries numerous collections of canons were put together, with materials drawn from the Pseudo-Isidorean decretals (a set of ninth-century Frankish forgeries which lent their authority to the magnification of papal power)<sup>22</sup> figuring prominently in the contents of the widely used *Decretum* of Burchard of Worms (1000–1025). Among those collections, the Italian *Collection in Three Books* (1112–23) and, north of the Alps, the *Panormia* and *Tripartita* of Ivo of Chartres (ca. 1040–1115) stand out as having influenced either directly or indirectly the great work that was destined to become something of a medieval best seller and to serve as the textbook upon which, for century after century, students of canon law were required to cut their juristic teeth. The work in question, which appeared around 1140, was the *Concordia discordantium canonum* (*Harmony of Discordant Canons*), later to be known simply as the *Decretum*.<sup>23</sup> It has long been known that the *Decretum* was restructured somewhat by those who first used it for teaching purposes and that new material, including selections from the *Corpus Juris Civilis*, were inserted into its text. But in the past decade a strong case has been made for believing that the original version, traditionally ascribed to the Bolognese monk Gratian, was in fact the work of two successive authorial hands, of which the historical Gratian himself may have been but the second.<sup>24</sup> Whatever the case, the *Decretum* was an extraordinary achievement, more comprehensive than any of the collections preceding it, more rational and coherent in its organizational structure, and benefiting from the dialectical techniques deployed both by the early civilian glossators and, later, by their theological confrères, more crisply decisive in the *dicta* it arrives at wherein conflicting canons were reconciled and harmonized. It embodied, in effect, the principles of a new canonistic jurisprudence, and combined later with the several collections of papal “decretals” (the outcome of papal legislative activity), it came to constitute the *Corpus Juris Canonici*.

As was the case with the *Corpus* of civil law, it, too, was rapidly engulfed



by an ocean of commentary. A good deal of this has survived, though much of it remains in manuscript form and still awaits critical editing and printing. The commentators on the *Decretum* came to be known as “decretists”; those on the *Decretals*, “decretalists.” By about 1216, the decretist Johannes Teutonicus had produced the standard commentary that came to be known as the *glossa ordinaria* to the *Decretum*. And by 1241 and 1322, respectively, Bernard of Parma and Johannes Andreae had similarly produced the ordinary glosses on the collections of decretals known as the *Liber extra* and the *Clementinae*. However important their work—and it was *very* important—these jurists are hardly household names today. Nor, for that matter, are the names of the distinguished decretist Huguccio (d. 1210) or of his great decretalist counterparts Alanus Anglicus (ca. 1202) and Hostiensis (d. 1271). Their views being characteristically embedded in a dense apparatus of interlinear or marginal commentary available, at best, in early printed editions to be found only in the rare book rooms of our major research libraries, their names and theoretical contributions have understandably not bulked all that large in our histories of political thought. And yet, as we shall see, without paying at least some attention to their contributions it would be difficult, indeed, to make adequate sense of the evolution of European political thinking from the thirteenth to the sixteenth centuries.

When one turns, however, from the Roman legal inheritance and the twelfth- and thirteenth-century developments that took their start from it and focuses on the new learning derived during those same centuries from the East, one finds oneself on ground that has been somewhat more assiduously cultivated. That is especially true of the reception of ancient Greek and more recent Arabic science, as well as of the epoch-making recovery and assimilation of the entire corpus of Aristotle’s philosophical and scientific writing. Scientific and philosophical works accounted, indeed, for the bulk of Greek and Arabic materials that found their way into Latin translation in the course of the eleventh, twelfth, and thirteenth centuries.<sup>25</sup> During these centuries, and in marked contrast with the Italian Renaissance later on, the great effort of translation was not targeted on the literature of the Greeks. As we have seen, some works by the Greek church fathers were translated, and new or revised translations were made of the much-read works of Dionysius, the Pseudo-Areopagite, first rendered into Latin a couple of centuries earlier. Purportedly written by Dionysius the Areopagite, pupil of St. Paul in the first century CE, but in fact produced in the late fifth century by an anonymous author of Neoplatonic sympathies, these works portrayed the ecclesiastical world no less than the celestial as infused with a divinely established hierarchical order.<sup>26</sup> More surprisingly, and so far as ancient philosophy went, only two of Plato’s dialogues, the *Meno* and the *Phaedo*, were translated in the course of the twelfth century and thereafter, it seems, not widely read. And that meant that for western Europeans the *Republic*, though widely studied in the Muslim world, was destined to remain little more than a title. Muslim

philosophers like Al-Farabi (d. 950) and Ibn Rushd (d. 1198), as well as the great Jewish philosopher Moses Maimonides, were well acquainted with the *Republic*, and they were all Platonists or quasi-Platonists in their political thinking.<sup>27</sup> But that fact went largely unnoted in the Latin world, where political thinking came to take a very different direction than it did in the Islamic. It was only with the humanist translations of the late fifteenth century that the *Republic* made its way finally into Latin.

As a result, and as Raphael's depiction of him in *The School of Athens* bears witness,<sup>28</sup> the Plato of the Latin Middle Ages is very much the Plato of the *Timaeus*, a dialogue which, though it contains in its "introductory conversation" a brief reprise of material drawn from the second book of the *Republic* concerning the external institutions of the state, is focused almost entirely on matters cosmological. In late antiquity Chalcidius had translated much of that often perplexing work,<sup>29</sup> appending to it a somewhat eclectic commentary. His translation and commentary alike were so widely read in the Middle Ages that they survive in more than a hundred and fifty manuscripts. In the twelfth century, in particular, they became the focus of intense scrutiny and additional commentary at the hands of a series of French masters, notably William of Conches (d. ca. 1154), who were traditionally associated (though possibly, it now seems, incorrectly) with the cathedral school at Chartres.<sup>30</sup> By the early thirteenth century, however, the cresting of a great new wave of translation was placing the unquestioned preeminence of the *Timaeus* under serious challenge. With the new translations, intellectuals in the Latin West now had available to them not only a great array of Greek and Arabic scientific writing but also a vast body of Greek and Arabic philosophical material. Prominent among the scientific writings were Euclid's *Elements*, al-Kwarizmi's *Algebra*, Ptolemy's *Optics* and celebrated *Almagest*, as well as the medical works of Galen and Hippocrates. And, in turn, altogether dominant among the philosophical works now made newly available in Latin were those of Aristotle, the complete corpus of whose writings came to be at the disposal of university people not long after the middle of the thirteenth century. Along with Aristotle's own works came an extensive body of commentary by such great Muslim philosophers as Ibn Sina (d. 1071) and Ibn Rushd (d. 1198). Both were to be so widely read in the West that their names came to be Latinized as Avicenna and Averroës, respectively. Ibn Rushd, indeed, was so generally admired that scholastic authors came to refer to him without further identification as "the Commentator," just as they had come to refer to Aristotle himself simply as "the Philosopher."

While it would doubtless be possible to do so, it would be hard to overestimate the importance for European intellectual life of this historic reception of Aristotle's *opera omnia*. Prior to that event an indirect sense of the sheer sweep of his thinking does seem to have filtered into the West. But so far as direct acquaintance with his texts went, he had been known as little more than a logician. Even then, and down into the early twelfth century, the

masters of logic had been limited to exercising their talents on the rather thin dialectical fodder furnished to them by the merely introductory treatises to Aristotle's logic that had come down to them in the Latin translations made by Boethius (d. ca. 525), one of Theodoric the Goth's civil servants. By the mid-twelfth century, however, this had come to be known as the "old logic" because by then the remaining portions of Aristotle's logical works had been translated into Latin and were being avidly studied under the rubric of the "new logic." Over the course of the next century the rest of his writings became available in Latin versions, the *Physics* and other natural philosophical materials quite early on before the turn of the century, the *Nicomachean Ethics* somewhat later (ca. 1246–47) in the version produced by Robert Grosseteste, bishop of Lincoln, and finally the *Politics*, translated by William of Moerbeke, in the 1260s.

The earliest Latin versions of such Greek writings had been produced in the various translation centers of Spain among which, in the later twelfth century, Toledo had become preeminent. The translation process involved had been, characteristically, both complex and indirect. At its most complex, indeed, the Greek writings involved had made their way westward via a multiplicity of linguistic stages—Greek into Syriac; Syriac into Arabic; Arabic, perhaps, into Hebrew; Hebrew, it might even be, into the Spanish vernacular and only thence into Latin. The end product, understandably, was not always very satisfactory, the less so, indeed, if the Aristotelian texts were confusingly intermingled with the Neoplatonizing commentaries of such as Avicenna and Averroës. As time went on, then, and as the interpretative challenges presented by such translations became increasingly more evident to scholastic thinkers, the effort to garner better translations made directly from the Greek originals gathered steam. In that effort, the route characteristically followed tended, accordingly, to run not through Spain but through the Norman territories in southern Italy and Sicily where, among other things, Greek was still spoken and instruction in the Greek language was more readily available.

By about 1255 the faculty of arts curriculum at the University of Paris had come to embrace the bulk of Aristotle's writings. These conveyed to Western thinkers the first complete and coherent philosophical system they had ever encountered. As a result, no other ancient thinker could henceforth rival him in prestige. And that was true whether the subject area involved was logic, natural philosophy, theology, ethics, or political thinking. For Latins, he was now "*the Philosopher*." He was the great authority with whose thinking budding philosophers and fledgling natural scientists simply had to be familiar. His were the philosophical categories in terms of which professional theologians were trained to think, and with his scheme of things entire medievals of intellectual bent had to struggle henceforth to harmonize their Christian beliefs. That struggle was not destined to be an easy one; nor was it susceptible of any truly definitive resolution. To that fact Robert Boyle (1627–91), pioneer chemist and "great father figure of British natural philosophy in

his times,”<sup>31</sup> bore eloquent witness no less than four centuries later when he confessed that he took “divers of Aristotle’s opinions relating to religion to be more unfriendly, not to say pernicious, to it, than those of several other heathen philosophers”—prominent among them, it would seem, the atomistic views of those whom he called the “Epicurean and other corpuscularian infidels.”<sup>32</sup> Though some historians of science appear to have been puzzled by that confession, there was really nothing startling about it. When Boyle made it he had just referred to Aristotle’s denial to God of both the act of creation and the providential governance of the world. And in so doing he had put his finger on the neuralgic point that had so often caused his medieval predecessors to wince as they struggled manfully to vindicate what he himself was to call the “Reconcilableness of Reason and Religion.”<sup>33</sup> Aristotle’s insistence, indeed, on the non-created, eternal nature of the universe, or so the historian of science Edward Grant has observed, “was to the relation between science and religion in the Middle Ages what the Copernican Heliocentric theory was in the sixteenth and seventeenth centuries and the Darwinian theory of evolution was in the nineteenth and twentieth centuries.”<sup>34</sup>

At the start, the difficulties that Aristotle’s teachings posed had been exacerbated by the fact that the crucial portions of Aristotle had first arrived in Neoplatonized Arabian guise, complexly interwoven with the paraphrases and commentaries of Avicenna and Averroës. The Aristotle, as a result, with whom the scholastic had first to cope was an Aristotle who appeared to teach not only the eternity of the world but also its necessity. That world, rather than being a created world presupposing a free decision on the part of its divine maker, was (or appeared to be) a world that eternally flowed from the divine principle on the analogy of a stream flowing ceaselessly from its source or of a logical conclusion proceeding necessarily from its premises. As such, it was a determined world in which everything had to be what it was and in which there was room neither for the providence of God nor for the free will of man. To the extent, moreover, that the Aristotle encountered was that of Averroës, he was also an Aristotle who denied to man any form of individual immortality.

There should be little cause for surprise, then, as the teaching of Aristotle in the fledgling universities began to reach beyond his logic and to extend into his natural philosophy and metaphysics, that the initial reaction of the ecclesiastical authorities should have been one, first, of nervous foot dragging and then of outright and repeated condemnation (1210, 1231, 1277). Nor should we be surprised that the long list of propositions which Étienne Tempier, bishop of Paris, condemned in 1277 was echoed a few days later, with the consent (or so he said) of the masters of Oxford, by Thomas Kilwardby, archbishop of Canterbury, himself a theologian of some distinction.<sup>35</sup> What should truly be cause for surprise, instead, is the fact that such condemnations failed in the end to derail the great drive to install the whole corpus of Aristotelian writings at the very heart of the faculty of arts

curriculum at both Paris and Oxford and, as time went on, at other European universities as well.

There were doubtless many reasons for this somewhat counterintuitive outcome. Among them was the simple fact that for thirteenth-century intellectuals to have turned their backs on Aristotle's natural philosophy and metaphysics would have entailed their cutting themselves off from the most advanced intellectual trends of the day. But, then, that had not prevented their Muslim predecessors in the early tenth century from doing precisely that when the earlier Mu'tazilite era of philosophically inspired rationalism had drawn to a close. For those predecessors, religious misgivings about the Aristotelian philosophical tradition analogous to those harbored later on by their Christian counterparts had deepened finally into rejection. As a result, the so-called foreign sciences of the Greeks had come to be extruded from the *madrasas* or schools of higher learning.<sup>36</sup> The fact that in the end nothing comparable happened in the Christian West suggests that there was something at least partially different there about the conditions under which intellectual endeavors had to be pursued. In that connection, two particular factors warrant scrutiny. The first is the nature and effectiveness of the methodology that Christian academics brought to bear on the dissonant authorities they sought to reconcile; the second is the significance of the institutional setting in which they pursued their academic labors. And those two variables call upon our attention here the more so in that the former powerfully conditioned the modes of argument that came to be characteristic of medieval political thinking from the thirteenth century onward, while the latter constituted the institutional context in which so many works of medieval political thought were written.

## Scholastic Method and University Setting

Medieval students had doubtless much in common with their modern counterparts. And one of their shared characteristics was surely a marked degree of dependence upon anthologies of extracts from the great authors of the past and from the critics and commentators of the present. It is at once the great strengths and weaknesses of such collections—in the Middle Ages they were known as *florilegia*—that the writers whose words are reproduced in order to throw light on a given topic seldom agree entirely one with another. In an age which revered the authority of the great authors of the past—legal, philosophical, theological—and one during which memorization, oral discussion, and public disputation had come to play a central role in the educational process, such discrepancies might have been more disquieting than fruitful had not a methodology or mode of inquiry been devised in order to cope with them. It is that methodology rather than any particular system of ideas that the word “scholasticism” is most properly used to denote. In effect, as has well been said, “the scholastic method was a development of the

*florilegium*. In its simplest form, it was an attempt to solve by infinitely patient criticism and subtlety of distinction the problems posed by the juxtaposition of related but divergent passages in the works of the great Christian writers.”<sup>37</sup>

The particular method involved reached its maturity in the Latin West during the late twelfth and early thirteenth centuries. Its roots, however, reached deep into the past—back even in part to Aristotle’s “new logic” itself. Thus his *Prior and Posterior Analytics*, *Topics*, and *Sophistical Refutations* all helped shape the disputational mode that became so prominent a feature of medieval university life.<sup>38</sup> As John of Salisbury, twelfth-century intellectual par excellence, noted in his *Metalogicon* in relation to the eighth book of the *Topics*, “In disputation, without this [book] one depends on chance rather than art.”<sup>39</sup> More proximately, however, those roots can be seen to reach beyond the blunt theological novelties of Abelard’s *Sic et Non* (*Yes and No*) into the dialectical methodology adopted already by the first medieval glossators on the Roman law and by such canonists as Ivo of Chartres who were to leave their mark on Gratian’s *Decretum*.<sup>40</sup> It is also of interest, moreover, and George Makdisi has helpfully drawn attention to the fact, that a marked parallelism existed between the scholastic methods eventually adopted in the Muslim and Christian academic cultures alike.<sup>41</sup> In an interesting effort to illustrate that parallelism he adduces as “two kindred spirits” and “two authors of model *summae*”<sup>42</sup> Thomas Aquinas (d. 1274) in the Latin West and, in the Muslim world, Ibn ‘Aquil (d. 1119), a man whom he describes as having had “a healthy respect for the intellectual equipment of the Mu’tazili [Mu’tazilite rationalists]” as well as “the deep commitment of the hanbali [school of legal interpretation] for the Scriptures, the Koran and traditions.” Taking the scholastic method as a mode of “presentation,” Makdisi notes that in his *Summa theologiae* Aquinas systematically divides the whole into parts, then into questions, and then into articles, with the last framed in interrogative form. Each article, he says, “begins with the formulation of a question, followed by a series of arguments for the negative, each with a number, called objections...; those are followed in turn by arguments for the affirmative based on Sacred Scripture and the Church Fathers; then comes a solution... to the question formulated at the head of the article. After this solution, a series of numbered replies... are given, each to its counterpart among the numbered objections.”<sup>43</sup> In effect, the mode of presentation involved is a mode of frozen disputation. Something similar can be said of Ibn ‘Aquil’s monumental *Wāḍiḥ fī fūṣūl al-fiqh*, which concludes with the following words:

In writing this work I followed a method whereby first I presented in logical order the theses, then the arguments, then the objections, then the replies to the opponents, then the pseudo-arguments [of the opponents for the countertheses], then the replies [in rebuttal of those pseudo-arguments]—[all of this] *for the purpose of teaching beginners the method of disputation*.<sup>44</sup>

This type of scholastic method, applied to the clashing authorities with which Muslim and Christian academics alike had to grapple, was tailor-made for rendering harmonious the dissonant and sometimes, even, compatible the contradictory. So far, however, as the relationship between scriptural revelation and philosophical reason was concerned, it is important to note that it met with a greater degree of success in the Latin West than it did in the Muslim world. In the case of the latter, as we have seen, the “foreign sciences of the Greeks” or “godless science of the Ancients” came eventually to be extruded from the curriculum pursued at the *madrasas*. Among the various factors contributing to this strikingly different outcome, a couple, I believe, stand out. First, the different status accorded to the Quran by Muslims and to the Bible by Christians. Second, differences in the institutional setting in which Christians and Muslims pursued their intellectual endeavors in general and their effort in particular to harmonize philosophic reason and religious revelation. For Muslim scholastics, in effect, the nature of the challenge involved was more severe than that confronting their Christian counterparts later on.

Thus the very nature of the Quran and the extraordinary status accorded it by Muslims could not but serve as a formidable obstacle, in any intellectual circles that aspired to being called orthodox, to bringing its teachings into intimate contact with Greek philosophical ideas. Muslims are “a people of the book” in a way that Christians can never be, and the New Testament is no more to be aligned with the Quran than is Muhammed with Christ. At the very base of Christian belief and worship lies the Incarnation; it is in the person of Jesus Christ that Christians claim to encounter the divine. Christ, the incarnate God, the eternal Word (*logos*) “who became flesh and dwelt among us” (John 1:14). At the base of Muslim belief, on the other hand, lies the divine law of righteousness, preexisting in God as an eternal archetype and entering history (one is tempted to say “becoming incarnate”) in the revelations that Muhammed received from the angel Gabriel and committed to writing in the work known as the Quran. Thus if Muhammed is to be compared with anyone, it is with St. Paul rather than Christ, and the New Testament is to be aligned with the *hadāth* or traditions rather than with the Quran. Indeed, the Quran comes as close as anything in Islam to occupying the place the person of Christ occupies in Christianity. It is “the glorious Quran,” “the noble Quran,” a sacred object to be touched by “none but the purified,” itself a miraculous event, the focal point of man’s communion with the divine.

In view of that fact, Muslim hesitations about subjecting Quranic teaching to philosophical analysis—just as the continuing absence from the Islamic world of anything really comparable to modern Western biblical criticism<sup>45</sup>—is entirely understandable. The Quran was a revelation complete in itself, the source along with the *hadāth* of a law (the *sharāʿa*) that shaped not only what we would call the religious but also many other aspects of life in Muslim society. Had the New Testament occupied in Christian belief so similarly



exalted a position it is very doubtful, for example, that the Roman law could have been so enthusiastically received or could have played so fundamental a role in either Byzantine or Latin Christendom. Had it occupied such a position it is also doubtful that the critical encounter between Greek philosophical thinking and biblical teaching and the subsequent interpenetration of the two, which together have done so much to shape the contours of the Western intellectual tradition, and, within it, the very texture of medieval political thinking, could ever have taken place.

The New Testament, however revered, did not, of course, occupy that sort of position. Moreover, it suggested (in words cited again and again by church fathers and medieval philosophers alike) that God manifests himself not only to the believers who encounter him in the word of Scripture but also to all people who care to scrutinize the fabric of his creation. “For what can be known about God is plain to them, because God has shown it to them. Ever since the creation of the world his invisible nature, namely his eternal power and deity, has been clearly perceived in the things that have been made” (Rom. 1:14–20). Christians, then, could regard the exercise of philosophic reason as the exploration of God’s natural revelation; the highly philosophical tone of the prologue to the Gospel according to St. John positively invited such an exploration and the correlation of its results with the truths revealed in Scripture itself. Already in Christ’s lifetime, Philo Judaeus, the leading light of the great Jewish community of Alexandria, had shown the way, blending the cosmogony elaborated in Plato’s *Timaeus* with the accounts of creation set forth in Genesis.<sup>46</sup> The most influential among the Greek and Latin fathers of the church were to follow in his footsteps: Clement of Alexandria (d. ca. 215) and Origen (d. ca. 254) in the East, St. Augustine, above all, in the West. Augustine, himself of marked Neoplatonic sympathies, says in the *Confessions*, in-deed, that he had found in the “books of the Platonists” all the fundamentals of his Christian belief except the doctrine of the Incarnation.<sup>47</sup> And on this general attitude toward philosophic reason, as on so many other matters, Augustine’s stance proved to be decisive for the medieval Latin West.

In the absence, however, of a certain type of institutional setting, it is not to be taken for granted that the existence of a positive attitude toward the effort to harmonize philosophic reason with religious revelation would, by itself, have been enough to ensure the success of that effort. Historians have not hesitated to speak of an “imperial” or “national” university at the Chinese imperial capital or to allude to the existence of universities at Athens, Alexandria, and Constantinople during the centuries prior to the thirteenth. Nor have they hesitated to equate the Muslim *madrasa* with the Western university. Strictly speaking, however, to use the word “university” to denote schools that flourished in cultures as yet uninfluenced by Western educational models is improper. Universities were a European invention and a medieval one at that. They reflected the rapid increase in the number of students and



scholars crowding into the urban schools of Europe during the second half of the twelfth century (by midcentury two to three thousand in Paris alone) and the concomitant need for organization and regulation.<sup>48</sup> The new institutional forms which answered this need, and which first arose spontaneously (though not without sympathetic papal support) in Salerno, Bologna, Paris, and Oxford, were later to be introduced deliberately at other centers of learning through the initiative of popes, emperors, and kings. We refer to such institutions simply as “universities,” but contemporaries called them “universities of masters and scholars.” The difference is a revealing one. For us today, the word “university” refers simply to the institution of higher learning which has come everywhere in the world to dominate systems of tertiary education. But when medievals first spoke of them they were in fact referring not so much to institutions as to people. They were referring, that is to say, not to the great schools or *studia generalia* where at least one of the advanced professional disciplines (medicine, law, theology) was taught and to which students from all over Europe resorted. Instead, what they had in mind were the guilds (*universitates*) of masters and students which, from the last quarter of the twelfth century onward began to appear at those great schools. Not until the fifteenth century, in fact, was it to become at all common for the term *universitas* to be used as a synonym for the *studium*, school, or place of study.

As the word itself suggests (*universitas* = a whole or corporation), the guilds concerned were sworn societies or corporations of masters or students who had joined together for mutual protection. Eventually, and in this like other guilds, they elected rectors to lead them and were able to win for themselves the full corporate prerogatives of using a common seal and being able to act as a single fictive person at law. Modeled on the commercial and craft guilds, which by then had carved out for themselves a secure niche in medieval urban life and economic enterprise, they represented a response to the need of the growing numbers of masters and students (congregated in alien cities where they did not enjoy the rights of citizenship) to protect their common interests against the pressures being put on them by townspeople and civic authorities alike. In addition, these guilds came to serve also as a protection against comparable pressures exerted by the local episcopal authorities, which often struggled, as, classically, at Paris, to retain over the educational activities of the new *studia* the secure degree of control they had once been accustomed to exercising over their own cathedral schools.

As the Parisian case makes clear, however, such pragmatic considerations represented but part of the story, and possibly not the most important part. If scholars pursuing diverse subject areas and moved often, professionally speaking, by differing and competitive goals chose to organize themselves there into a single guild or university, it is also because they were responding to “a higher educational ideal” and considered themselves to be “involved in a common endeavor, the pursuit of knowledge and truth.”<sup>49</sup>

It was that same common endeavor, moreover, that came to call with the passage of time for a more precise degree of definition in the structure of the fledgling universities themselves. Thus they came to be divided into “faculties,” with the (undergraduate) faculty of arts being regarded as preparatory to the “superior” professional faculties of medicine, law, and theology. During the twelfth and thirteen centuries, at least, the classes of the urban schools were conducted in leased or borrowed buildings. As a result, the new universities were not encumbered by the extensive property holdings that are both the presupposition and bane of their modern counterparts and that could have been open to confiscation by hostile civic authorities. In their early battles with those authorities, then, the trump card of the universities was their ability to declare a strike or “cessation of studies” or even, after preparatory negotiations, to move the whole *studium* to a more accommodating city. The threat of strike was no idle one because it could have the effect of emptying the off ending town of its rentpaying student population which, in some cases, must have constituted as much as a tenth of the total populace.<sup>50</sup> Thus in the early thirteenth century, cessations at Bologna, Paris, and Oxford led, respectively, to the creation of new universities at Padua, Angers, and Cambridge.<sup>51</sup> Of course, for maneuvers of this type to be effective, it was necessary for the masters or doctors themselves to control who could teach in their schools. This they did by regulating entry into their ranks (recognized publicly at the commencement ceremony known as an “inception”), by imposing on the school what amounted to a closed-shop policy, and by establishing control over the granting of the *licentia docendi*, or license to teach, the forerunner of all academic degrees.<sup>52</sup> Degrees were to be given only to the qualified; that a candidate was qualified was to be determined not simply by length of studies but also by examination; examination to be both systematically effective and reasonably equitable presupposed coherent curriculum, organized teaching, and a regulated course of studies. “Curriculum, examinations, commencement, degrees, are all part of the same system; they are all inherited from the Middle Ages, and in some form they go back to the twelfth century.”<sup>53</sup>

Given the marked degree of cultural interchange in the Middle Ages between the Islamic world and Christendom and the intriguing parallelisms in their respective intellectual development,<sup>54</sup> it is not surprising that historians have been tempted to look to the Islamic world in general and the *madrasa* in particular for the origins of the university.<sup>55</sup> Theirs was the culture, after all, in which higher education and the institutions supporting it had matured first. The *madrasa*, “the Muslim institution of learning par excellence,” had come into existence before the late eleventh century when Nizam al-Mulk (d. 1092), grand vizier of the Saljuk sultans, had created “a vast network of madrasas” right across the territory of the Eastern Caliphate.<sup>56</sup> *Universitas*, however, denoted a corporate body, a legal abstraction, possessing juristic personality

and capable of being the bearer *at law* of rights and responsibilities. But the notion of the corporation was altogether absent from Islamic law, “which recognizes the physical person alone as endowed with legal personality.” So the university, accordingly, was “utterly alien to the Islamic experience.”<sup>57</sup> The *madrasa*, it is true, did enjoy a form of perpetuity deriving from its status as a charitable trust under the law of *waqf*, but it lacked the element of dynamism and adaptability as well as the degree of legal protection that its status as a corporation conferred upon the medieval university. Under the law of *waqf*, however unwisely restrictive the donor’s original trust agreement had been, and however changed the circumstances in which the institution it had established now found itself, the trustees (unlike those of a Western university) were not empowered to make any alterations in the original agreement—not even if their objective in so doing was the laudable one of ensuring that the original purpose of the trust could continue to be fulfilled.

In comparison at least with the universities of Latin Christendom and (some of) their constituent colleges, or so Makdisi argues, the *madrasas* also lacked something else. They were bereft in fact of any effective legal protection against government intervention or the type of misappropriation by powerful governmental officials that so often led, after the death of their founders, to the unlawful seizure of assets and properties belonging to *waqfs*.<sup>58</sup> He also suggests the presence of another affiliated drawback. Unlike their Christian counterparts, jurisconsults of the *madrasa* did not enjoy the benefit of incorporation into the type of guild structure that found expression in the medieval university, jealous of its collective prerogatives and quick to take collective action when those prerogatives appeared to be threatened from the outside. That lack of protective incorporation may help account for the ultimate inability of the jurisconsults, at least in the Sunni tradition, to ensure and prolong, in the face of governmental intervention, “the free play of opinions, arrived at freely and freely debated to the point of consensus once characteristic of Islamic higher learning.”<sup>59</sup>

It would, of course, be all too easy to make too much of the degree of independence of spirit prevailing in the medieval university. In our own day the continuing currency of the (admittedly murky) term “political correctness” reflects the uneasy conviction that self-censorship and the constricting pressure of widely held community assumptions and expectations are not altogether foreign to the modern academy. They were certainly not foreign to the medieval. In this connection there come irresistibly to mind from the late fourteenth century the words of a Parisian theologian, Johannes Breviscoxe (Jean Courtecuisse). After ruminating rather provocatively in the course of a rather prolix academic exercise about the source of some aspects of the papal power of coercive jurisdiction, he wryly noted (tongue planted firmly in scholastic cheek): “But this I do not *assert*. For it is perilous to speak of this matter—more perilous, perhaps, than to speak of the Trinity, or the Incarnation of Jesus Christ, Our Savior.”<sup>60</sup>

Freedom from external interference, however, was something of a different and more encouraging story. In successive struggles with the burghers of Paris, the royal government, and the local ecclesiastical authorities, the masters of the fledgling university of Paris with the benefit of papal support were indeed able in the thirteenth century to vindicate their autonomy.<sup>61</sup> By the following century, moreover, the Parisian Faculty of Theology was so confident of its independent standing as to denounce as heterodox a novel doctrinal take on the Beatific Vision that Pope John XXII had ventilated in a series of sermons preached at the papal court in 1331–32. And such was that Faculty's standing and prestige that the hapless pope, a very distinguished canon lawyer but self-confessedly no theologian, accordingly withdrew his endorsement of the suspect doctrine.<sup>62</sup>

The importance, then, of the emergence of universities on the European academic scene in the twelfth and thirteenth centuries is not to be gainsaid; nor is the supportive nature of the institutional setting they provided for those medieval intellectuals in the central and later Middle Ages who contributed to the development of a tradition of political thinking that was both rich and internally diverse. By institutionalizing higher education in western Europe, the universities provided a comparatively stable academic context in which large intellectual endeavors could be, if not more readily undertaken, at least more systematically pursued and more often brought to fruition. By securing for scholars a privileged position in society and at least a reasonable degree of independence from nonacademic pressures, they also created the conditions in which such endeavors could be pursued over long periods of time and with a minimum of interference from those uninformed outsiders whose fate it was to dwell in the outer darkness beyond the perimeters of the guild. Together with the tools embedded in the scholastic method, certainly, they made it possible for medieval intellectuals to come remarkably close to achieving the impossible: namely, the domestication within the alien confines of the Christian worldview of the “naturalistic” and at some critical points incompatible philosophy of the pagan Aristotle. And one does not have to call upon elaborate counterfactual argumentation in order confidently to assert that had that not been the case, the subsequent development of Western political philosophy would have been incomparably different.

## 4. Recuperating the Past (ii)

### *The Encounter with Christian and Roman Antiquity*

NOTWITHSTANDING HIS enthusiastic evocation of the intellectual vitality of the twelfth century, Charles Homer Haskins himself viewed the century as “rather a slack period in the history of political theory.” Registering in that particular context a somewhat tepid appraisal of the significance of John of Salisbury’s *Policraticus* or *Statesman’s Book*, he noted that “the pamphlet literature dealing with church and state had just spent its force during the controversy over investiture, and the more systematic discussion awaited the translation of Aristotle’s *Politics* ca. 1260 and the *Summa* of Thomas Aquinas.”<sup>1</sup> That judgment is plausible enough, but in relation no less to the subsequent history of political thinking than to the history of intellectual life at large, one should be careful not to underestimate the importance of what has aptly been termed “the mighty iceberg of change,” largely “unseen but widely sensed” that loomed so large over twelfth century life.<sup>2</sup> And we are the less likely to make that mistake if we remember the degree to which the thinking of the age on matters political and religious still revolved within the orbit prescribed by the early medieval notion of a “unitary church-state,” and if we heed the admonition, accordingly, to “consider constantly, side by side, ecclesiology and political theory, ideas about the church and ideas about the state.” The admonition is Brian Tierney’s, and he issued it in the context of emphasizing that “the juristic culture” of the twelfth century, woven together from the interrelated labors of Roman and canon lawyers alike and characterized by an almost inextricable intermingling of religious and secular motifs, “formed a kind of seedbed from which grew the whole tangled forest of early modern constitutional thought.”<sup>3</sup>

The image is an arresting one, and it has a pertinence to twelfth-century intellectual life that extends well beyond the juristic sector that Tierney himself had specifically in mind. With the possible exception of John of Salisbury’s *Policraticus*—and to that we will return later in this chapter—the century may not have produced the type of focused works of political thinking that were to become characteristic of later centuries. But it certainly sowed the seeds of a whole array of important later developments. These ranged from the high medieval view of the papacy as a universal sacral monarchy to the instrumentalities of later constitutionalist restraint on the exercise of executive power, and from the infusion of corporatist thinking into ecclesiological and political thinking alike to the reemergence and growth of the more emotional and individualized spirituality that was to become dominant in the later Middle Ages, bringing with it a firm stress on the role of the individual will in the ecstatic encounter with the divine and forming a crucial stage in the

protracted travail of the spirit that Hegel believed was needed in order to precipitate “the principle of the self-subsistent inherently infinite personality of the individual.” That principle, he argued, came to the fore first in the arena of religious sensibilities, “the innermost region of the spirit.” It was only via a “long and severe effort of civilization” that it was destined finally to make its way into the secular sphere and to move to the foreground in the thinking of the early modern political philosophers.<sup>4</sup> Some of those seeds of later developments, admittedly, were to take long centuries to germinate. But we should not miss the fact that they were sown in the context of the vigorous interrogation of the ancient past—Christian, Roman, and Greek—that was so marked a feature of the vibrant culture to which the twelfth century gave birth.

## The Encounter with Christian Antiquity

The exploration of the Christian past, no less than that of the Roman, produced some quite disparate outcomes. From Roman antiquity the twelfth century was to derive two very different models for the political renewal of *Romanitas*. On the one hand, the emperor Frederick Barbarossa vibrated to high imperial frequencies and, inserting into the *Corpus Juris Civilis* itself the decrees emanating from the imperial assembly he had held at Roncaglia in 1158, celebrated the *renovatio imperii Romani* as a *sacrum imperium* in no way dependent on the papacy and built instead upon a firmly combined foundation of Roman law and Germanic custom. On the other hand, and at much the same time, Arnold of Brescia and the other leaders of the antipapal Roman commune were wedded to the notion of reviving the Roman senate as the supposed vehicle for rule by the people.<sup>5</sup> Similarly, the interrogation of Christian antiquity led not only to the marshalling of texts supportive of the cause of a papal monarchy possessed of universalist aspirations; it led also to a measure of nostalgia for the decentralized and communitarian nature of early Christianity, as well as to an intense preoccupation, especially among monastic reformers, with the lineaments of a real or imagined apostolic or primitive Christianity. Beyond that, moreover, the interrogation of Christian antiquity led also, if, it may be, less directly, to a recovery of the intense preoccupation with the individual psyche that St. Augustine had reflected in the *Confessions* some seven centuries earlier. And from that flowed the dissemination across Europe of a new type of spirituality—more inward, more personal, more emotional than that cultivated during the great age of Benedictine monasticism that was by now drawing to a close. These three developments, all of them at one remove or another pertinent to the complex shaping of political thinking later on, we will take up in turn.

While emphasizing the close connection between the onset of the Investiture Contest and the appearance of new collections of canon law, Tellenbach was careful to insist that it was not the canon law in itself that gave rise to the new outlook that one associates with the Gregorian reform. It

was the new outlook, rather, that helped stimulate the production of new collections of law differing significantly in tone from the *Decretum*, the older, quasi-standard, and certainly widely circulated collection put together by Burchard of Worms (d. 1025).<sup>6</sup> While Burchard had clearly affirmed a primatial role for the papacy and its function as a court of appeal for bishops who found themselves under accusation, it was also the case that not all that many of his texts even referred to the papacy and that he had not been apt to question the role that the laity played in the church of his day. In contrast, though it has not been established that any of the new collections of canons was actually commissioned by the papal court,<sup>7</sup> prominent among their distinguishing features was the marshalling of authorities in support of two objectives: first, the curtailing of lay intrusion into matters spiritual; second, a marked preoccupation with the Roman primacy and the privileged position of the Roman church that was altogether novel in both intensity and degree. This particular preoccupation, certainly, appears to have done much to determine the particular selection that the compilers of these new collections were apt to make from the materials coming down to them from centuries preceding—the decrees of church synods and councils, the writings of the church fathers, and the decretals of the early popes.<sup>8</sup>

Prominent among these collections, along with those of Cardinal Deusdedit, Anselm of Lucca, and Bonizo of Sutri, was the *Collectio in LXXIV titulos digesta* (*Collection in Seventy-Four Titles*). And of the more than three hundred canons gathered together in that work almost half incorporated materials drawn from the Pseudo-Isidorean or False Decretals. That that was so should hardly be cause for surprise. Of greater significance is the way in which that particular material was itself selected, handled, and shaped. Burchard of Worms in his own citations of the Pseudo-Isidorean material had been faithful to its original, pro-episcopal intent. But the later, reformist canonists, notably the compiler of the *Collection in Seventy-Four Titles*, cited “the Pseudo-Isidorean statement of the papal primacy, not as a protection for the other bishops, but as a definition of the papacy vis-à-vis the whole Church,” departing thereby from what seems to have been its original intent in order to magnify papal authority and to emphasize the degree to which the bishops were subordinated to it. And via the *Collection in Seventy-Four Titles* that revised and Romanized version of Pseudo-Isidore’s ecclesiology was to make its way into such later and highly influential collections as those of Ivo of Chartres and of Gratian himself.<sup>9</sup>

Something similar may be said about the way in which the *Collection in Seventy-Four Titles*, reaching back to Christian antiquity, itself reappropriated and bent to papalist ends the celebrated sentiments that Pope Gelasius I had expressed at the end of the fifth century in a letter to the Byzantine emperor Anastasius. As we saw in the previous volume, the real novelty in those sentiments (and it proved to be one without much lasting power) was the denial to the emperor of any sacerdotal status.<sup>10</sup> Speaking of the two powers,



royal and priestly, by which “this world” (*hoc mundum*) was chiefly ruled, Gelasius himself had been at pains to emphasize in balanced fashion their “proper activities and separate dignities,” thereby adopting so far as the two powers, *sacerdotium* and *imperium*, were concerned what in later terminology would be described as an essentially “dualistic” stance.<sup>11</sup> Already in the early ninth century Gelasius was being rendered somewhat differently, as having said not that “this world” was chiefly ruled by two separate powers but that “the body of the same *church* is divided principally into two excellent persons the sacerdotal and the royal.”<sup>12</sup> And Pope Gregory IV (827–44), it seems, had not hesitated to claim that “the rule of souls, which is the pontifical power,” was “greater than the imperial power, which is temporal.”<sup>13</sup> Following along the same interpretative trajectory, the *Collection in Seventy-Four Titles* now went even further. From its version of Gelasius’s letter it dropped the words that had made it clear that the emperor’s submission to the bishops was only in matters pertaining to “the reception and right administration of the heavenly sacraments.” That left the way open for Gregory VII in his celebrated letter of 1081 to Bishop Hermann of Metz to modify Gelasius’s statement in such a way as to align it with his own insistent theme that “the priests of Christ are to be considered as fathers and mothers of kings and princes and of all believers.”<sup>14</sup> And “it was... the [amended] Gregorian version of Gelasius,” having found its way into Gratian’s *Decretum*, “which became a permanent part of medieval canon law.”<sup>15</sup>

Rather than being passively receptive, then, the Gregorian interrogation of Christian antiquity was both active and selective in nature, itself very much shaped and conditioned by the reformist convictions current in its own day. As the future Gregory VII had himself acknowledged in 1059, the reformers reached back at times beyond the ecclesiastical abuses seen to have crept in during the centuries immediately preceding in order, “imitating the old Fathers,” to search out and restore “the Roman order and ancient custom of our church.”<sup>16</sup> A similar impulse, moreover, was even more markedly evident among contemporary reformers of more tightly focused monastic concerns. Theirs was the anxious quest to identify in the distant past the lineaments of a primitive or apostolic Christianity which might serve to guide them in their efforts to reshape monastic life.<sup>17</sup> Fueling that quest was the growing preoccupation of their era with the study of the biblical text itself,<sup>18</sup> with the writings of the church fathers (here Augustine, Jerome, and Gregory the Great loomed large), and beyond them, with the literature revelatory of the mode of life that characterized the first monks: Athanasius’s *Life of Anthony*, Cassian, who used the term *ecclesia primitiva*, and the *Rule of Benedict*.<sup>19</sup> Fueling that quest, also, was a widespread surfacing of reformist dissatisfaction with the modalities of life characteristic of the Benedictine monasticism of the day. For it reflected all too clearly the degree to which from the seventh century onward monasteries had come to be embedded in secular society, their abbots (themselves sometimes laymen) drawn as great lords into governmental



service, their monks committed above all to incessant rounds of intercessory prayer on behalf of the noble families who controlled their monastic houses or owned them outright, those houses sometimes used, indeed, as virtual prisons for the safe confinement of the defeated political rivals of those families. And so on. Monastic piety itself had come to be thoroughly assimilated to the mode of religiosity characteristic of early medieval society at large. And in that religious mode the classically Christian concern with the relationship of the individual soul to God had come in striking degree to be submerged in the collective rhythms of a devotional life that was communal rather than personal, external rather than internal, public rather than private.

That that should have been the case should not be cause for surprise. The conditions of life in early medieval Europe were deurbanized and localized to a degree well-nigh unthinkable in the Mediterranean world of the early Christian era. Under those conditions it is understandable that religious life should have taken on a markedly communal cast, clearly linked in its solemn liturgical celebrations with the collective destiny of the *folk* and closely integrated in its most routine devotions with the seasonal needs and aspirations of an almost wholly agrarian populace. In that setting monasticism itself had come to be transformed. Reacting sharply in the fourth century to what they viewed as the overeager accommodation of the church to the world, the first monks had fled that world, seeking in the Egyptian desert the solitude, rigor of life, and freedom from worldly temptation that they believed necessary if their anxious quest for spiritual perfection was to succeed. By the early ninth century, however, and the originally nonclerical and sectarian nature of the monastic impulse notwithstanding, what had been a vocation for the few, lived out on the margins of society, had become instead a widely influential mode of life, one that appealed to a broad segment of society and was frequently pursued in large and wealthy communities deeply involved in the day-to-day life of the countryside. At the same time, the *raison d'être* of monasticism had by and large ceased to be the pursuit of personal sanctification and had become instead an essentially clerical and professional one, that of interceding with God on behalf of the rest of society via the discharge of an elaborate daily round of corporate worship. The monks had come to be conceived, and to conceive of themselves, as soldiers of Christ engaged in an essentially external task, that of struggling by their ceaseless round of prayer against the all too palpable and numberless forces of evil which they saw as threatening in altogether concrete ways the well-being alike of clergy and laity, king and kingdom.<sup>20</sup>

With this type of monastic piety—public, impersonal, communal, heroic—and the type of spirituality it both reflected and helped sustain in the church at large—the eleventh and twelfth centuries were to see among monastic reformers and their lay sympathizers a great upwelling of discontent. I dwell on that phenomenon here less because of the direct role it played in the reshaping of European religious sensibilities than because of its indirect role

in the reshaping of Western political thinking. That discontent was nourished by and found its justification in the modalities of spirituality believed to have been characteristic of the apostolic or primitive church and of the first generation of monks who had pursued the hard and narrow way in their urgent quest for individual spiritual perfection. For the heroic battle against the devil and the agencies of evil, apprehended in terms that were characteristically external, was now substituted an essentially internal struggle with the evil tendencies lurking in the very heart of the believer. The rigid objectivities of the old, monastic-inspired penitential codes, with graduated tariffs of sins, offenses, and the penalties attached to them (the whole focused on concrete actions rather than underlying intentions), were now replaced by the anxious scrutiny of the individual conscience. The emphasis, in effect, came now to be placed on will, intention, and personal repentance, “on spiritual liberty, inwardness or interiority, and the search for a life modeled on the Gospels and specifically on the human life of Christ.”<sup>21</sup> In the reforming monastic literature of the day the imitation, then, of Christ bulked large. And if *Scito te ipsum*—“Know thyself”—was one of the most characteristic injunctions to be found in that literature, it is perhaps no accident that it featured also as the subtitle of Peter Abelard’s *Ethics*. For twelfth-century moral philosophy, in a way that ran parallel to the inwardness of the new monastic spirituality, tended to “interiorize and subjectivize all morality.” It emphasized “the importance of intention [rather than act or consequence] in the doctrine of sin” and gave a “new meaning to the concepts of consent, intention and good faith.”<sup>22</sup> Linked now with a new emotionalism and a firm stress on the role of the individual will in the encounter with the divine, and borne far and wide by the proponents first of the Cistercian spirituality and then, in the thirteenth and fourteenth centuries, of the Franciscan, it came to reside at the very heart of late medieval piety. In those centuries, moreover, it was paralleled in moral philosophy and theology by the heightened stress that thinkers of the Franciscan school came to place on the role of will, duty, and intention in matters ethical.<sup>23</sup> And in later centuries, too, via the enduring popularity in Protestant as well as Catholic Europe of some of the late medieval mystical writings (not least among them the little manual known as *The Imitation of Christ*),<sup>24</sup> the influence of its essential individualism was to reach still further.<sup>25</sup>

In itself, it is true, the searching exploration of the internal frontiers of the soul characteristic of late medieval spirituality and the firm grasp of a notion of selfhood that went with it did not lead in the Middle Ages to any immediate expression in the type of specifically *political* individualism that was eventually to rise to a position of such centrality in the political thinking of the early modern era. But we should not miss the fact that the emergence in the late eleventh and twelfth centuries of this individualized and internalized form of spirituality was part and parcel in those centuries of a much broader set of phenomena. The latter were evident in the lives of lay people, in the secular

literature and artistic forms of the era, and in the modalities of social life and legal thinking—all of them reflecting a preoccupation with selfhood and a foregrounding of individuality that had not been evident in the centuries immediately preceding. The renewed preoccupation with history on which Chenu has placed such emphasis,<sup>26</sup> the vogue of autobiography and of collections of letters, the change in a personalizing direction of modes of portraiture, the spread among the laity of recourse to oral confession and, with it, examination of one's own conscience, the renewed cult of friendship, the crystallization of the notion of subjective individual rights<sup>27</sup>—all of these phenomena are witness to a shift in sensibilities, attitudes, and preoccupations in the course of the late eleventh and twelfth centuries of such inescapable dimensions that one historian was led to attribute to the era nothing less than a veritable “discovery of the individual.”<sup>28</sup> However catchy as a book title, however, as a piece of sober historical description the phrase pushes the interpretative envelope a little too far. In any attempt, looking forward to modernity, to track the development of notions of selfhood and of autonomous individuality one comes up, alas, against the sobering fact that the evidence on which one must perforce rely is, at best, fragmentary and uneven; it ill supports any optimistic assumption of a sort of onetime breakthrough or, alternatively, some species of steady evolutionary progression.<sup>29</sup> We have to acknowledge, in effect, that the development in question, rather than involving a smooth and gradual process, proceeded rather by fits and starts and was marked by fluctuations, backtracking, and “much marking time.”<sup>30</sup> But that duly conceded, we would be wrong not to acknowledge also the significance of the departures made in the twelfth century. For they clearly invalidate the orthodoxy of Burckhardt and Michelet into which, in our school days, the older among us were routinely socialized. In terms of that confident orthodoxy, Europe had to await the dawn of the Italian Renaissance in order to witness the emergence of that preoccupation with selfhood and deep engagement with the “inward development of the individual” that, having become one of the hallmarks of modern European culture, was to find its parallel in the enthronement of the autonomous individual at the very heart of early modern political thinking.

## **The Encounter with the Roman Philosophical Legacy**

What was eventually to become the trademark slogan of that older Burckhardtian orthodoxy was in fact coined by the French historian Jules Michelet. It was later to be echoed by Jacob Burckhardt himself and, in the English-speaking world, by John Addington Symonds, this last summing it up in lapidary form as “the double discovery of the outer and the inner world” or “the double discovery of the world and of man.”<sup>31</sup> Thus man's rediscovery of his selfhood and his apprehension of “the dignity of human thought” was portrayed as having gone hand in hand with his “discovery of the [outer]

world,” an opening up to nature and to its subsequent exploration by science.<sup>32</sup> But if what we now know about the twelfth century gives the lie to claims traditionally made for the novelty of Renaissance individualism, what we have long known about medieval intellectual life as a whole, and especially about the vitality of the tradition of natural philosophizing that moved to center stage in the university faculties of arts after the recovery of Aristotle, also gives the lie to Burckhardian claims for a sudden discovery of the outer world at the time of the Italian Renaissance. That much is certain. Only a little less certain is the sheer importance of the explorations of notions of nature and the natural that had begun already in the twelfth century. Those explorations had taken place in both cosmological and political thinking. And they had been stimulated by a pattern of renewed reflection on ancient materials long since available in the medieval West: both the Latin translations of parts of Plato and of the *De inventione* and *De officiis* of Cicero, as well as the fragments of the latter’s *De republica* and *De legibus* embedded in the works of Lactantius and Augustine, and, in addition, the *De officiis* of Ambrose of Milan.<sup>33</sup> Although it is not easy to overestimate the seismic impact of the recovery of Aristotle’s writings and their appropriation by European scholastic thinkers during the course of the thirteenth century, in this particular connection it has proved possible to do so. Ill-defined evocations of “Aristotelian naturalism” have been permitted to cast into the shadows or even to consign to oblivion the extensive discussion of “nature” and the “natural” that punctuated the intellectual life of the century preceding. It was, indeed, the vitality of those discussions, or so it has been argued, that helps explain the intense scholastic interest in gaining access to Aristotelian natural philosophy and provided “the philosophical motive,” as it were, for that “nascent interest in the writings of Aristotle.”<sup>34</sup> For the twelfth-century cosmologists and poets had arrived at a point where they no longer viewed the cosmos as “a tissue of symbols” but saw it, instead, as “a substantial reality in which something other than spiritual messages might be discerned.”<sup>35</sup>

It was among a series of prominent thinkers at the schools of Chartres and Paris—and notably with Thierry of Chartres, William of Conches, and, in more poetic guise, Alain of Lille—that such discussions came to the fore. And it was an intensely renewed focus on the Latin version of Plato’s great cosmological dialogue, the *Timaeus*, that did much to stimulate them. For the bulk of that dialogue had long been available to European intellectuals in the translation and accompanying commentary which Chalcidius had made in the late fourth century.<sup>36</sup>

It is true that if one makes the effort to extricate the *Timaeus* from its millennial entanglement with one or other version of Christian Neo-platonism, the dialogue emerges as a work that is in many ways alien to Christian modalities of thought. It is in fact a difficult, philosophized version of the type of archaic myth representing the creation of the world, not as a process of *creatio ex nihilo* but as the wresting of cosmic order from eternally

preexisting chaos. The *Enuma elish*, or Babylonian creation myth, stands out as a classic example of that genre, which is one to be found in one form or another right across the globe.<sup>37</sup> And because of that, Mircea Eliade, the great historian of comparative religion, was once led to remark of Plato that he “could be regarded as the outstanding philosopher of ‘primitive mentality,’ that is, as the thinker who succeeded in giving philosophic currency and validity to the modes of life and behavior of archaic humanity.”<sup>38</sup> If read, however, through the prism of biblical notions and from one or other type of Neoplatonic perspective (and that is the way in which Philo Judaeus and the Christian church fathers read it), the account of creation in the *Timaeus* could seem to be so tantalizingly evocative of the accounts of creation set forth in the biblical book of Genesis as to lend a patina of credibility to the widespread ancient belief that Plato in the course of alleged travels in Egypt had somehow encountered the sacred writings of the Hebrews.

That sense of providentialist closeness or familiarity, strikingly evident in the way in which Philo Judaeus made use of the *Timaeus* in his commentary on Genesis,<sup>39</sup> was intensified for twelfth-century thinkers by the way in which Chalcidius had rendered the dialogue into Latin, just as, long centuries later, it was to be intensified for Anglophone Christians of Platonic bent by seductive echoes of the King James Bible in the language Benjamin Jowett characteristically employed to render it into English.<sup>40</sup> Of the *demiurgos* or cosmic craftsman in the *Timaeus* Plato had said that “the god took over all that is visible—not at rest but in discordant and unordered motion—and brought it from disorder into order.” By rendering that notion, however, as the “will of God” which is “the most certain origin of things,”<sup>41</sup> Chalcidius paved the way for the twelfth-century commentators to assimilate Plato’s demiurge (a figure who was, in fact, limited in his creative activity both by preexisting matter and by the eternally subsistent Forms, Archetypes, or Ideas) to the omnipotent God of Abraham, Isaac, and Jacob who created the world out of nothing.<sup>42</sup> Inspired also by Plato’s insistence that “without a cause nothing can come to be,”<sup>43</sup> they were led in markedly naturalistic fashion to pursue the rational explanation of physical phenomena well beyond the creative activity of that divine first cause and to seek in the scientific realm of secondary causation “the legitimate cause and reason” of every physical event.<sup>44</sup> This “far-reaching naturalism”<sup>45</sup> is particularly evident in the way in which Thierry of Chartres set out to explain Genesis by using the methodology of physics (*secundum rationem physicam*) and to view nature as unfolding after the creation in accordance with the working of natural efficient causality.<sup>46</sup> Similarly Williams of Conches, whom Willamien Otten describes as having displayed “an undiluted rationalism, a kind of secular intellectualism *avant la lettre*,”<sup>47</sup> while arguing also that in the poetry of Alain of Lille “the idea of secondary causes” gave rise further “to a personification of Nature as a full-blown goddess, who mediates between sublunar humans and transcendent creator.”<sup>48</sup> So intent were these “Chartrians,” indeed, on

such naturalistic approaches that William of Conches and others of similar mind found themselves put in the position of having to defend themselves against those contemporary religious critics of their work “who, under pretext of exalting the power and wisdom of God who imposes order on the universe at will, detracted from the simple play of the laws of nature, sufficient in themselves to explain that order.”<sup>49</sup>

In relation to this twelfth-century move to explain the operations of the physical world in terms of secondary (and essentially autonomous) natural causality, Chenu speaks of a “desacralizing of nature.”<sup>50</sup> And although the evidence is fragmentary and frequently hard to assess,<sup>51</sup> this particular move in natural philosophy does seem to have helped generate as its harmonic the analogous twelfth-century desacralizing of political society that surfaces, as we shall see, in the thinking of John of Salisbury.

In the introductory conversation among Socrates, Timaeus, Hermocrates, and Critias that forms the preface to the *Timaeus* (§§ 17a–27b) and sketches out plans for a (never to be completed) trilogy of dialogues, it may well have been Plato’s purpose to indicate that his abiding interest lay not in cosmological speculation itself but, rather, in matter ethical and political. Certainly, or so Cornford argues, if we probe deeply enough we can see that

The chief purpose of the cosmological introduction [to the proposed trilogy—i.e., that set forth in the body of the *Timaeus* itself] is to link the morality externalized in the ideal society [already described] to the whole organization of the world. The *Republic* had dwelt on the structural analogy between the state and the individual soul. Now Plato intends to base his conception of human life, both for the individual and society, on the inexpugnable foundation of the order of the universe. The parallel of macrocosm and microcosm runs throughout the whole dialogue.<sup>52</sup>

This the twelfth-century masters seem instinctively to have apprehended. We have noted already that having read the *Timaeus*, they seized upon the Platonic notion that the physical world reflected the working not only of a first creative cause but also of a series of secondary natural causes. The centrality of Plato’s emphasis upon the parallelism between macrocosm and microcosm also caught their attention. It did so to such an extent, indeed, that it became “a central preoccupation of teaching at Chartres.”<sup>53</sup> To the degree, then, to which this characteristic Platonic motif was assimilated by twelfth-century thinkers, to that same degree his overlapping analogies between the individual soul and civil society, or between civil society and the cosmos, cannot fail to have been on their minds. Hence the attendant likelihood that the species of desacralized “naturalism” so evident in their cosmological and scientific thinking may have encouraged a comparably desacralized naturalism when it came to their thinking about matters political.

As we shall see when we come to examine the political thinking of John of

Salisbury and the contributions made to political discourse by the canonists and civilian legists, there is good reason to believe that that was indeed the case.<sup>54</sup> In the introductory conversation that prefaces the central cosmological discourse of *Timaeus*, Plato had put in the mouth of Socrates a brief recapitulation of what he is portrayed as having said on the previous day—nothing other, in effect, than a discourse on the external structure of political society analogous to that which is set forth in part of the second book of the *Republic*.<sup>55</sup> But while the passage in question does not appear to have resonated in any truly powerful way with twelfth-century thinkers,<sup>56</sup> William of Conches in his gloss on the *Timaeus* did summarize it in such a fashion as to make his commentary one of the most likely sources of inspiration or even “the immediate stimulus” for the organological description of political society that his pupil John of Salisbury (as we shall see) was to develop at such length in his *Policraticus*.<sup>57</sup> At the same time, William makes it clear that more important for him than the lineaments of man-made “positive justice” (*justitia positiva*) unfolded by Socrates in his introductory discourse was that foundational structure of “natural justice” (*justitia naturalis*) apparent in God’s creative action and his government of the created world, both of them described and analyzed in the great cosmological discourse that forms the bulk of the *Timaeus*.<sup>58</sup> Punctuated as it is (and in this unlike the introductory political statement of Socrates) by the evocation of crucial correspondences between natural macrocosm and human microcosm, that discourse positively invited a shift of emphasis from natural to moral law and afforded a ready-made bridge to the type of Ciceronian discourse about matters political to which the vogue of Cicero’s *De inventione* and *De officiis* (as well as the closely related *De officiis* of Ambrose)<sup>59</sup> appears to have given rise during the course of the twelfth century. For the interest in those works also served to insert into contemporary thinking about politics another species of “naturalism.” What that Ciceronian “naturalism” meant, however, calls for further specification.

In relation to the *Timaeus*, twelfth-century references to “nature” employed the word to denote the entire ordered complex of phenomena existing in the physical world wherein the operations of secondary causes can be discerned. In relation to such works of Cicero, however, “nature” is used to denote that which is not accidental but intrinsic or proper to a particular being—in effect, its essence. The particular being in question is, of course, man, and in relation to man and to the origins of political society Cicero had been at pains to insist that what distinguished the nature of man from that of animals in general was his possession of the crucial faculties of reason and speech. These alone account for the fact that people were somehow able to make the difficult transition from a brutish and scattered mode of existence into organized political societies possessed of the amenities which civic life alone makes possible.<sup>60</sup> About that transition there was nothing that was necessary. Cicero speculated, indeed, that it must have called for the persuasive prompting of



some great, wise, and eloquent leader who had developed a plan to effect it.<sup>61</sup> In that respect, political society was to be seen as conventional rather than natural in its origins. But to the extent to which it presupposed the natural sociability of man<sup>62</sup> grounded in the natural faculties of reason and speech, to that extent it was also in an important sense natural. Cary Nederman has argued forcefully<sup>63</sup> that the main impact of Ciceronian ideas for medieval thinkers was that of having opened up for them a sort of *via media* between two extremes: on the one hand, the traditional Augustinian and conventionalist understanding of political society, not as something natural to humankind but as a consequence of the Fall, a divinely instituted punishment and remedy for sin; on the other, the later, Aristotelian-inspired view that it was fundamentally natural to man in the sense that only as a member of a *polis* could man become truly human and have the opportunity to realize his full moral potential.<sup>64</sup> That *via media*, “taking its substance from the writings of Cicero” but taking account also of the enduring impact of the Fall, “held that while men always retained their natural inclination to congregate—even after the Fall—the recognition of its nature and its implications for their lives needed to be awakened in and drawn out of them by means of reason and persuasion.” And from the late eleventh century onward, that Ciceronian account of “the natural origins of society... [was to enjoy] wide currency throughout the Middle Ages,” even among some of those who wrote later on from a predominantly Aristotelian perspective.<sup>65</sup>

Nederman’s argument is a persuasive one. In echoing it, however, one would do well to keep in mind two related points. First, that Cicero’s formulations often lack precision, with the result that one cannot always affirm with confidence the exact import of the claims he is making. Second, that when it comes to matters political, and given the multiplicity of meanings attaching to the word “nature,” we should be careful not to be too casual in deploying the term “naturalism.”<sup>66</sup> In particular, when Cicero adduced a natural, causal explanation for the coming together of men in political society, we should note that the type of causation in the forefront of his mind (and in this like the twelfth-century cosmologists of Chartres) appears to have been *efficient* causality or causation in terms of antecedent agent or event. But when, in the thirteenth century, thinkers of Aristotelian inspiration proffered similarly naturalist explanations for the same development, their predominant preoccupation was with *final* causality or explanation in terms of end or purpose. In that respect, “Ciceronian naturalism” was not identical with “Aristotelian naturalism.” At the same time, given Aristotle’s insistence that in order to find a process intelligible we must know, in addition to the final cause, its efficient, formal, and material causes, there is, in effect, a certain complementarity between these two forms of naturalism. It is this that may help explain the ability of later medieval political thinkers like John of Paris to find a place for Ciceronian views in works written from a predominantly Aristotelian perspective.



The point at issue here doubtless calls for further specification or clarification. But I propose to defer that until the next chapter, where it will serve as an appropriate introduction to the Aristotelian approach to political thinking on which it will be the purpose of that chapter to focus.

## The Encounter with the Roman Legal Inheritance

The *Corpus Juris Civilis* and *Corpus Juris Canonici* stand out on the European intellectual landscape as towering monuments of juristic creativity and achievement. However marginal their role in the preoccupations of those whose interests focus on modern political thought, during the twelfth and thirteenth centuries they loomed large in the efforts of thinkers who were struggling to come to terms with the nature and structure of political society. Gratian himself clearly viewed the church as a juridical community analogous to secular communities, and of Gratian's *Decretum* Chodorow has said that in it he "sought to develop [nothing less than] a Christian theory of the structure of society." Similarly, that the *Decretum* is "one of the most significant works of political theory written in the mid-twelfth century."<sup>67</sup> That duly acknowledged, we must forego in the present setting any ambition to catalogue the full array of legal concepts that contrived to find their way from the two laws into the broader stream of medieval political thought. Suffice it to say that they were both numerous and important and that some of them, unmentioned at this juncture, will become the focus of attention in subsequent chapters. For the moment, then, having in the previous chapter discussed the twin processes whereby the study of Roman law revived and a great effort was made to systematize and make sense of the confused body of ecclesiastical law and custom handed down from the centuries preceding,<sup>68</sup> four central and substantive issues may properly command our attention now. First, what the two laws have to say about the very nature and ultimate foundation of law itself. Second, what they say (or imply) about the grounding of political authority. Third, what views one can extract from them about the reach and limits of political authority (whether legislative or executive, secular or ecclesiastical). Fourth, having told us quite a bit about notions of an (objective) natural law, what, if anything, they convey also about the related concept of (subjective) individual rights.<sup>69</sup>

Given the fact that both bodies of law were compilatory in nature, embracing materials of varying provenance, separated in origin sometimes by centuries and reshaped by these sixth- and twelfth-century editors to an extent we cannot fully determine, the task of interpreting what they have to say can be more than challenging. This becomes evident immediately when one tries to address what these two great legal collections have to say about the nature of law itself.

In the opening section of the *Digest*, the *Corpus Juris Civilis* begins with its celebrated tripartite division of law (in general) into those laws derived

from the city (*jus civile*), those derived from the nations of the world (*jus gentium*), and those derived from the very precepts of nature itself (*jus naturale*).<sup>70</sup> Straightforward enough, it might seem, and though modern commentators have viewed the classification itself as being of post-classical provenance, Justinian's sixth-century editors or compilers ascribed it to Ulpian, a jurisconsult of the early third century CE. Run one's eye down the page, however, and one comes across two other definitions of a different type, the first of which is an authentic text of the jurisconsult Gaius (second century CE), the other ascribed to Paulus, a contemporary of Ulpian's. Both of these propose *bipartite* classifications embracing the *jus civile* or law prevailing in each city and either "the law of nations" (*jus gentium*—thus Gaius), "law which is followed by all mankind," or "law which is always equitable and good, as is natural law" (thus Paulus).<sup>71</sup>

It might be possible to bring the two latter texts into alignment one with another on the grounds that Gaius equates the *jus gentium* with "what natural reason dictates to all men," nudging it thereby in the direction of the notion of natural law evoked by Paulus. Ulpian's definition of natural law, however, as a law "not peculiar to the human race" but one that "nature has taught all animals" precludes any attempt to identify it with that natural moral law which is "always equitable and good." In common, moreover, with other jurists cited elsewhere in the *Digest*, and in this unlike Gaius, Ulpian also postulates something of an opposition between the *jus gentium* and *jus naturale*.<sup>72</sup> In trying to make any sort of unified sense of these texts, then, the interpreter confronts something of a cat's cradle of disparate views about the ultimate foundation of law.

Prescinding, however, from the anxious quest of commentators to bring a measure of fugitive harmony to these ultimately dissonant materials, A. P. d'Entrèves urged the wisdom of recognizing that the members of Justinian's legal commission had to have been well aware of the contradictions present among the texts they were juxtaposing. Beyond that, and emphasizing that "nowhere... do we find in the *Corpus Juris* an assertion of the superiority of natural to positive law,"<sup>73</sup> he also pressed the need to avoid, in effect, any "fetishism of words" and to grasp the fact that when these jurists spoke of *jus naturale* they were concerned to evoke not so much the Stoic philosophical doctrine<sup>74</sup> as a "professional construction of [the] lawyers," a "reflection upon existing law," the significance of which was a matter of *function* rather than *doctrine*. "What the Roman jurisconsults were involved in," he adds, was "a quest for the intrinsic character of a given situation,"

the rule corresponding to the nature of things, to a concrete situation of fact and life.... *jus naturale* was to them *not a complete and ready-made system of rules but a means of interpretation*. Along with the *jus gentium*, with which it was certainly connected and possibly for a time even identified, it played a decisive part in the process of adapting

positive law to changing conditions and in elaborating the legal system of an international or rather supernational civilization.<sup>75</sup>

The medieval civilians, however, appear to have moved beyond that essentially procedural stance. Azo, for example, argued that if an imperial rescript contravened the dictates of natural law, it was void of authority.<sup>76</sup> But if they wrestled mightily with the disparate meaning given to natural law in the pertinent texts of the *Digest* and *Institutes*, they did so inconclusively. It was left, then, for the canonists to make the decisive move and to adopt an authoritative stance. When one turns, then, to the canon law, to the “Treatise on Laws,” which the first twenty distinctions of Gratian’s *Decretum* constitute, one finds oneself in something of a different mental world. Via the *Etymologies* of Isidore of Seville,<sup>77</sup> it is true, Ulpian’s tripartite division of law does put in an appearance, with the law of nations and the civil law being defined in much the same way as he himself had defined them.<sup>78</sup> The big difference lies instead in the way in which Gratian handled the notion of natural law and in the fact that Ulpian’s tripartite classification is in effect subordinated to the bipartite classification with which Gratian opened the *Decretum*. Thus, in a lapidary formulation also drawn from Isidore of Seville and in authoritative fashion, Gratian stipulates that “the human race is ruled by two things, namely, natural law and custom. Natural law is what is contained in the [Mosaic] Law and the Gospel, by which each person is commanded to do to others what he wishes done to himself and prohibited from inflicting on others what he does not wish done to himself.”<sup>79</sup>

As early as the twelfth century canonists had betrayed an inclination, so far as natural law was concerned, to privilege this opening statement and to bracket Ulpian’s description of that law as one that “nature had taught all the animals.” Rufinus (d. ca. 1192), the leading twelfth-century glossator in the *Decretum*, attested to the fact that the canonists of his day were finding that latter definition to be too general and were focusing instead on what natural law meant for matters pertaining to the human species.<sup>80</sup> But that tightening of focus duly noted, two further issues call for clarification: first, the precise meaning of *jus naturale* and its relationship with the divine; second, the relation of natural law to human law, whether written ordinances or long-established customary norms.

Natural law, Gratian tells us, began “with the appearance of rational creatures” and it is “contained in the Law and the Gospel.”<sup>81</sup> But although the early thirteenth-century *glossa ordinaria* by Johannes Teutonicus appears to suggest some sort of identity between natural and divine law,<sup>82</sup> Gratian himself stops short of asserting any such identity, noting that “not everything contained in the Law and the Gospels [e.g., ceremonial precepts] pertains to the natural law.”<sup>83</sup> Scholars, as a result, have differed and continue to differ on that particular point.<sup>84</sup> But what is not in question is the fact that for Gratian, too, natural law stands in close relation to the divine. He classifies it as

undoubtedly a higher law, one that predates the civil law in time and one that surpasses it in dignity. “Natural law... prevails by dignity over custom and [legal] enactment.” As a result, all things “that have been either received in custom or set down in writing are to be held null and void if they are contrary to natural law.”<sup>85</sup>

Subsequent canonists did not fail to take rueful account of the dissonant texts in the *Decretum* suggesting that natural law was something akin to a species of animal instinct, and they tried to handle such texts by teasing apart the different meanings attaching to the word “natural.”<sup>86</sup> But so far as Gratian’s central treatment of the topic goes, with its depiction of the natural law as an immutable source of divinely sanctioned norms of justice that transcended the force of any merely human legal enactment,<sup>87</sup> it is not inaccurate to claim that the canonists had succeeded in giving the concept of natural law “an unprecedented coherence, clarity and force.”<sup>88</sup> And their work certainly did do a great deal to familiarize medieval intellectuals with that doctrine and to establish it effectively as part of the routine furnishings of their minds.

No comparable coherence and certainly no real completeness can be attributed, however, to what the two bodies of law have to tell us, in the second place, about the origins or foundations of political authority. In the wake of the Investiture Contest, ecclesiastical writers—the canonists among them—had come to view the church “as a political community in its own right,” and Gratian himself treated it “primarily as a [Christ-founded] juridical community analogous in some ways to other political communities.”<sup>89</sup> But if he talked about consent, and he did, it was not in relation to the foundation of the church’s authority but with reference to the election of bishops. In that connection, moreover, he appears to have viewed it very much as a procedure grounded in the legislation of church councils and responsive to practical rather than theoretical considerations.<sup>90</sup> So far as the origins and grounding of secular political authority is concerned, the viewpoint to be gleaned from the admittedly scattered and incidental comments made by the early canonists is an essentially patristic one. Political authority is not a deliverance of nature. It is something conventional. But, if conventional, it is by no means the product of any human agency. Instead, in that it is a punishment and remedy for sin, it finds its grounding in the divine will itself.<sup>91</sup>

So, too, even more explicitly, did the imperial authority, at least according to some of the emperor Justinian’s statements that the twelfth-century civilians encountered in the texts of the newly revived Roman law. More than one text in the *Digest*, *Institutes*, and *Code* conveyed that emperor’s sense that he owed his imperial authority to “the celestial majesty” and that God had given him to mankind as a “living law” (*lex animata/nomos empsychos*) to whom all laws are subjected.<sup>92</sup> But in the imperial rescript that prefaces the *Digest*, Justinian also foregrounds a very different notion. Namely, the idea

that by an ancient law known as the *lex regia* the Roman people itself had transferred to the emperor every right and all its power.<sup>93</sup> In so doing, he was giving expression to the conviction, deeply embedded in Roman jurisprudence from the second century onward, to the effect that in the *populus romanus* itself lay the ultimate source of political authority, whether conceived in legislative or in administrative terms.<sup>94</sup>

During the era when it was fashionable to stress the Teutonic origins of modern liberties and to denounce the *damnosa haereditas* of Roman law and its contribution to the rise of modern absolutism, that conviction tended to be overlooked and the legal texts in which it found expression ignored. It is not altogether surprising, then, that the onset of disenchantment with the Teutonic myth should have coincided with the beginning of a more positive appraisal of the nature of the Roman contribution. It was, accordingly, to the accompaniment of references to “the recent deplorable exhibitions of tribalism in Germany” that in 1939 Charles Howard McIlwain made the most forceful of his claims to the effect that “the true essence of Roman constitutionalism does not lie in those late statements of absolutism to which so much currency has since been given,” such as the maxim *Quod principi placuit legis vigorem habet* (What pleases the prince has the force of law) or Ulpian’s assertion *Princeps legibus solutus est* (The prince is not bound by the law).<sup>95</sup> Instead, it lies “in the older deeper principle that the *populus* [people] and none but the whole *populus*, can be the ultimate source of legal authority.”<sup>96</sup> In so arguing, McIlwain referred to those earlier texts incorporated in the *Corpus Juris Civilis* indicating that “law [*lex*] is what the Roman people... has established,”<sup>97</sup> and that the prince’s decisions have the force of law precisely in virtue of the fact that by a special sort of law concerning his government, that is by a *lex regia*, “the people confers upon him the whole of its government and power [*imperium et potestas*].”<sup>98</sup>

McIlwain conceded, however, that Cicero was the “first expositor of Roman republican institutions” whose work we know in any great detail, and Stein reminds us that the *Corpus Juris Civilis* is concerned with private law, governing the relations among private individuals, rather than public law, governing the organs of the state.<sup>99</sup> It is very difficult, accordingly, to determine with any degree of confidence what exactly the ancient Roman principle of the derivation of all power from the consent of the people can originally have meant and whether what the medieval civilians made of it was altogether a medieval novelty or in some degree true to its ancient historical roots. To that issue we will have to return in a subsequent chapter.<sup>100</sup> In the meantime it must suffice to note that in the wake of the recovery of Roman law and as we move forward into the thirteenth and fourteenth centuries, we can expect to encounter a growing preoccupation in theory with the notion of consent and in practice with the means whereby that consent could be secured.

When that began to happen, other closely related notions that were embedded in the revived Roman and developing canon law also came powerfully into play. These involved—our third point of concern—the reach and limits of political authority whether in the secular kingdoms or in the universal church itself. In both cases the arguments deployed were far from being unidirectional in nature and have a confusingly bipolar quality. While exploiting prominently, that is to say, those texts from the *Digest* and *Institutes* that underpinned claims to monarchical sovereign power, civilians and canonists alike felt compelled to grapple also with those other texts and inherited traditions or practices that imposed limits on the legislative, judicial, and jurisdictional power of pope and emperor alike.

So far as the emperor went, the twelfth-century civilians inherited from their classical forebears no systematic analysis of “legislative authority, jurisdiction, or delegated power,” and they were obliged as a result to embark on an effort to construct a pertinent and coherent theoretical framework. That demanding effort continued to engage their attention and that of their successors right on into the thirteenth and fourteenth centuries.<sup>101</sup> Their task was not an easy one. They had somehow to balance affirmations of imperial sovereignty with intimations of constitutional limitation on imperial power, both of which they found embedded in the *Corpus Juris Civilis*. The celebrated texts (so dear to later absolutists) affirming that “the prince is not bound by the law” and that “the will of the prince has the force of law” pushed them in the direction of endorsing the emperor’s sovereignty and the lack of any constitutional restraint on the free exercise of his absolute power. As we have seen, however, the latter of those two “absolutist” texts went on to explain that he held that sovereign power by virtue of the fact that the people had conferred upon him all its own *imperium et potestas*.<sup>102</sup> Further than that, moreover, another celebrated text known as the *lex digna* or *Digna vox*, promulgated by the emperor Justinian and incorporated in the *Code* proclaimed: “it is a saying worthy of the majesty of the ruler that the prince should profess himself to be bound by the laws. So much does our authority depend upon the authority of the law. And in fact it is greater for the empire to submit the principate to the laws.”<sup>103</sup> Moving beyond such central texts, the early civilians were led also to place “limitations on the emperor by declaring that property rights of individuals derived from natural law and *jus gentium* and by limiting the right of the emperor to alienate imperial lands.”<sup>104</sup> The legacy of the twelfth-century civilians to later commentators, then, was ambivalent and bifurcated in nature. It remained open to development in later centuries both in the direction of monarchical absolutism and in the direction of a constitutionalist emphasis on the monarch’s subordination to the law and his obligation to foster the well-being of his subjects.

Something similar may be said about the Decretist legacy to the canonists of the late thirteenth, fourteenth, and fifteenth centuries, though that legacy was at once richer and more complex than that of the early civilians. Given

the fallout from the Investiture Contest and the ecclesiological issues that had come to the fore during its protracted course, it is hardly surprising that a dominant theme for Gratian and for the Decretists who followed immediately in his wake should have involved the elaboration of notions of papal sovereignty over the church. Nor, given the felt need for a strong central authority to which the marked acceleration in the number of cases appealed to Rome witnesses, is it surprising that the emphasis should come to be placed on “the absolute authority of the pope to govern the church and to sit as its supreme judge.” While viewed as being himself liable to judgment by no one, he was regarded also as possessing the fullness of power (*plenitudo potestatis*—an ancient term that came very much to the fore during the course of the twelfth century).<sup>105</sup> Thus Gratian incorporated in the *Decretum* the crucial texts from Leo I and Pseudo-Isidore underpinning the view to which St. Bernard of Clairvaux was to give a classic formulation in the work he addressed to Pope Eugenius III (1145–53). “In accordance with your canons,” he wrote, “others [i.e., other bishops] are called to undertake a part of the responsibility for souls, you, however, are called to the fullness of power. The power of others is confined within certain limits, yours extends even over those who have themselves received power over others.”<sup>106</sup> One early thirteenth-century canonist interpreted this papal fullness of power as entailing “the pope’s overriding authority within the church, his power as judge and administrator, and his role as pastor of the entire church.”<sup>107</sup> And already in the late twelfth century, the Roman legal notion of sovereignty having found its way into ecclesiastical tradition, the pope was coming to be referred to not only as the “ordinary judge of all” but, borrowing further from ancient Roman nomenclature, as a “living law” (*lex animata*), and by virtue of having all laws within his breast (*omne jus habet in pectore suo*), as the universal church’s supreme legislator.<sup>108</sup>

But if, in Decretist thought, we unquestionably find this “strong emphasis on the sovereignty of the pope,” we also find an equally “strong emphasis on the indefectibility of the community,” itself directly reflective of the Holy Spirit’s guiding presence at work among the Christian people.<sup>109</sup> That, too, had to be recognized and with it the limits it imposed on the untrammelled exercise of papal power, as well as the degree to which it entailed a right on the part of the community to reject any abuse of that power. The pope might well be the supreme judge in the church, but on matters of faith or those that tended to the “general state” of the church (*status ecclesiae*), like every other member of the faithful he was seen by the end of the twelfth century to be bound by “the norms of faith and order” which emanated from the consensus of the Christian community and were embodied in the enactments of the general councils.<sup>110</sup> Gratian had included in the *Decretum* the old maxim dating back to the Symmachan forgeries of the sixth century to the effect that the pope could be judged by no one. But he had done so in the (by then) established form which qualified the absolute reach of that maxim by adding



“unless he is caught deviating from the faith.”<sup>111</sup> And while, as we shall see later on, the canonists of the thirteenth and fourteenth centuries developed, strengthened, and refined the notion of papal sovereignty and the implications of the papal *plenitudo potestatis*, they were also obliged to wrestle with the countervailing ecclesiological tradition which sought to vindicate not only the existence of limits to the freewheeling exercise of papal power but also a divinely instituted episcopal order of rights and privileges which not even a pope could abrogate.<sup>112</sup>

Such was the bifurcated legacy, potentially exploitable on behalf of constitutionalist restraint as well as monarchical absolutism, that the twelfth century canonists, in this like their civilian counterparts, handed on to their later medieval successors. In the tradition of constitutionalist thinking that was to flower in the fourteenth century, the defense of rights inherent in the episcopal office was to play a central role. But—turning now to our fourth concern—the scholarship of the past half century has drawn attention to the salience also of rights that were at once more universal and individual. The juristic culture of the twelfth century, it now seems likely, may have been a seedbed capable even of nurturing among its many other seedlings the notion of the natural subjective rights of individuals that was to rise to such prominence in the thinking of the early modern political philosophers.<sup>113</sup> No more than thirty years ago Kenneth Minogue could deliver himself of the memorable dictum that “natural rights are as modern as the internal combustion engine.”<sup>114</sup> In so doing, of course, he was merely echoing the traditional assumption of early modern origins which Leo Strauss and C. B. MacPherson each had (in their differing ways) sought classically to vindicate, and which latter-day sympathizers with the Straussian approach to political philosophy incline still to defend.<sup>115</sup> But the years since Minogue made his confident assertion have been punctuated by the claims of historians to the effect that the origins of the notion of individual natural rights must be sought much earlier than that, in the centuries which preceded the seventeenth. Political philosophers, admittedly, have tended to be less than enthusiastic about such claims. But in the mid-twentieth century George de Lagarde had pointed to William of Ockham (d. 1349) as the great originator, and Michel Villey had later presented a more developed and influential case supporting that basic intuition.<sup>116</sup> The case they made for fourteenth-century origins appears (directly or indirectly) to have shaped the assumptions on the matter held by a varied array of subsequent commentators, from Heinrich Rommen to Isaiah Berlin and from Louis Dumont to Michel Bastit.<sup>117</sup> More pertinent to our concerns, however, is the fact that the attention of subsequent scholars preoccupied with the roots of the notion of subjective rights and with ideas closely affiliated with that notion has been drawn further back in time and has come to focus on the humanistic jurisprudence characteristic of the Twelfth-Century Renaissance. Though he did not believe that the critical breakthrough to a clearly articulated version of that notion had occurred prior to Ockham,



Villey himself had detected in the way in which civilian commentators on the Roman law had handled the concept of *dominium* some preliminary and hesitant moves in that direction. So, too, following in his footsteps, and in a book that attracted much attention, had Richard Tuck.<sup>118</sup> Tuck had insisted, however, that with the medieval civilians and canonists the only type of subjective rights detectable were not the active rights or licenses for action that scholars like Strauss and Villey usually had in mind but, rather, what have variously been called claim-rights or passive rights or rights of recipience.<sup>119</sup>

It was left, then, for Brian Tierney and, after him, Charles Reid to assert to the contrary that the notion of active rights (and related refinements, too) can be detected already in the accumulating mass of commentaries that the canonists had written both on Gratian's *Decretum* and on the later collections of papal decretals. Tierney himself found the starting point in the writings of the twelfth-century decretists. And Reid, who by way of follow-up focused on the decretalists, was at pains to insist that what was involved was not simply a matter of individual rights being embedded *implicitly* in the canonistic legal structure. Something more specific was involved. "The decretalists," he says, "possessed a well-developed *explicit* understanding of subjective rights." "Large areas of medieval canon law consisted," in fact, "of structures of rights"—none more obviously so than matrimonial law, "where a firm commitment to the notion of an objective order of right did not preclude an equally firm recognition of the rights which the contraction of a marriage conferred upon the marital partners."<sup>120</sup>

If the case for twelfth-century origins is a powerful and plausible one, the claims involved are admittedly large and controversial. Certainly, the line of argument involving the transition from the notion of subjective individual rights in general to the more rarified notion of individual *natural* rights is an exceedingly intricate one.<sup>121</sup> But so far as one's concern is simply with the subjective rights of individuals active no less than passive, grounded explicitly in the positive law, it now seems safe to affirm that the pertinent history *begins* at least no later than the twelfth century. Here again the sheer importance of that era's juristic culture and the significance of its growing preoccupation with the individual is, once more, strikingly evident.

## **The Contribution of John of Salisbury**

John of Salisbury (c. 1115–80), who seamlessly combined the active and contemplative life, that of a leading intellectual with that of the ecclesiastical civil servant (he served both Theobald and Thomas à Becket at the archiepiscopal see of Canterbury), was in many ways the quintessential product of the great recuperation of ancient learning on which we have been dwelling. In approaching his *Policraticus* or *Statesman's Book* it is hard not to have one's horizon of expectations set by the traditional characterization of

the book as “being at once the first attempt of the Middle Ages at an extended and systematic treatment of political philosophy and the only such book written before the recovery of Aristotle.”<sup>122</sup> And yet, on a first cursory encounter, the experience of reading the *Policraticus*—almost eight hundred pages, 250,000 words in Webb’s standard edition<sup>123</sup>—feels a bit like that of navigating the various proliferating streams of a river delta in the hope of drifting finally into the one that will lead at last to the sea. One is buoyed by the fact that the current keeps flowing (albeit sluggishly at times), but the streams are apt to meander confusingly and it is hard to be confident that one is navigating the main stream rather than drifting disconsolate down some lesser tributary destined to end in the fluvian equivalent of a cul-de-sac. If one takes a closer and more deliberate look, however, one that takes into account the way in which the book was put together and the mode of argument characteristically employed, the outlook becomes somewhat less discouraging.

It was in 1156–57, having off ended King Henry II and been thrust as a result into exile from the archiepiscopal court of Canterbury, that John undertook the composition of the work he was to dedicate to Thomas à Becket. To that work he eventually attached the title of *Policraticus*, consigning thereby to subtitle status the more accurately descriptive *Of the Frivolities of Courtiers and the Footprints of Philosophers* (*De nugis curialium et vestigiis philosophorum Libri VIII*). Before addressing those frivolities in what came to be books 1–3 and framing (in books 4, 5, and 6) the section of the work that constitutes a sort of *speculum principum*, he appears to have begun the whole great effort by writing the section that ended up forming the greater part of books 7 and 8, a sort of self-consolatory essay vindicating against Epicurean hedonism the way of “true philosophy” grounded inexpugnably in “the love of the divine.”<sup>124</sup> If that way of going about composing a book is hardly conducive to the type of clear thematic development that might well have been encouraged by a more orderly and sequential way of going about things, neither is John’s characteristic mode of argumentation. Rather than unfolding his topics in the direct, logical, and analytic fashion that was to become characteristic of later scholastic discourse, John’s argumentative tactic is largely associative and somewhat diffuse, building on parallelisms and the deployment of illustrative examples. Thus the microcosm/macrocosm parallelism bulks large, as does a rich profusion of biblical and classical exempla. This expository mode, by its subordination of his argument to the unfolding of examples and the leisurely exploration of their implications, has the effect of clogging the argumentation flow and making it “impossible for him to come to the point straight away.”<sup>125</sup>

That duly acknowledged, a reasonably close reading serves to reveal that he does eventually get there. The argumentative tactic in question, which may conceivably reflect Abelardian influence,<sup>126</sup> turns out to be more artful and

deliberate than casual or accidental. Nederman correctly reminds us, moreover, that the *Policraticus* is “far more than a theoretical treatise on politics. It equally contributes to the fields of moral theology, speculative philosophy, legal procedure and biblical commentary.” Above all, perhaps, it is “a work of edification” in which moral and political principles are intimately intertwined. And as a work of that sort it can understandably give the impression at times of being a veritable “tissue of exempla.” But those exempla are deployed with deliberation. They are intended “to help the reader to bridge the gap between abstract moral discourse and the actual conditions in which human beings find them-selves.”<sup>127</sup>

So far as they are classical in provenance, those exempla form part of the dazzling display of allusions to or quotations from the classical authors that is one of the most eye-catching features of the *Policraticus* and that has sometimes led John of Salisbury to be viewed as “the best read man of the twelfth century.”<sup>128</sup> Of such citations there are more than a thousand, outnumbering even his multitudinous allusions to the Bible and lending some credence to the case made by those who have depicted John of Salisbury as having engineered in medieval political thinking something of a secularizing turn away from the earlier medieval commitment to political *theology*.<sup>129</sup> Not all, of course, is necessarily as it seems. We now know that his knowledge of some of the classical authors whom he cites (Aulus Gellius, Frontinus, Suetonius, for example) was an arm’s length one rather than direct. In effect, it was dependent on the *florilegia* or anthologies of extracts current in his day.<sup>130</sup> Moreover, though complete scholarly consensus on the matter has not been achieved, it also seems more likely than not that John’s extended reliance in books 5 and 6 on the *Institutio Trojani* (an otherwise unknown work that he attributes to Plutarch) for his analysis of political society as a living body whose several members are mutually interdependent is, in fact, reliance on a fiction of his own devising.<sup>131</sup> Intellectual originality or the introduction of some personal novelty was far from being admired in the Middle Ages. Accordingly, the invention of a manual of political advice for the instruction of the emperor Trajan served John usefully as a device for cloaking his own originality and adorning with the nimbus of classical authority what he himself wanted to say.<sup>132</sup>

Whatever the case, the freight of classical learning carried by the *Policraticus* is heavy and impressive. In the course of its complex argumentation we encounter many of the authors and authorities—literary, philosophical, and legal—that we have seen to bulk so large in twelfth-century intellectual discourse. John may, for example, have been no jurist, but the revived study in his own day of Roman law clearly left a deep imprint in his thinking.<sup>133</sup> It did so especially in connection with his attempt to come to terms with the reach (and limits) of princely power. The emperors Constantine, Theodosius, and Justinian he praises for their efforts to ensure that “the most sacred laws, which bind the lives of all should be known and

upheld by all.”<sup>134</sup> In his pages, the name of the third-century juriconsult Papinian jostles side by side with that of the twelfth-century civilian Vacarius, who did so much to acquaint contemporary Englishmen with the rudiments of Roman law. Similarly prominent are the names of the ancient Greek sages Chrysippus and Demosthenes, mediated to him via the pages of the *Digest*.<sup>135</sup> The *Code* of Justinian John cites directly, invoking the celebrated law known as the *Digna vox* in order to support his claim that the prince who is not subject to his own laws ought, nevertheless, freely choose to subordinate himself to them.<sup>136</sup>

So far as philosophical works went, John had a firsthand knowledge of the surviving works of Cicero, especially the *De officiis*,<sup>137</sup> and having as a student sat for three years at the feet of William of Conches, he was (understandably) intimately acquainted with Chalcidius’s Latin version of Plato’s *Timaeus*, which he quotes repeatedly and in some detail.<sup>138</sup> From Cicero, the *Digest*, and the *Timaeus* he drew the species of “naturalism” with which the *Policraticus* is imbued, as well as the emphasis on the moral guidance afforded by nature and the natural law. And although John was by no means the first medieval writer to evoke the organic analogy when speaking about political society, it is hard, brooding over the extended nature of his treatment of the republic as the macrocosmic equivalent of the microcosm of the human body, not to think in terms of Platonic traces. In particular, it would be unwise to dismiss the possible impact on his thinking, not only of the teaching of William of Conches but also of Plato’s own elaboration in the *Timaeus* of the structural analogy between the living human body and the macrocosmic body of the world, itself portrayed as “a living creature with soul and reason.”<sup>139</sup> Just as in the *Republic*, to the text of which John did not of course have access, Plato had evoked a similar structural parallelism between the republic and the individual human soul.

Congruent with this way of approaching political society is the fact that John’s primary focus is on rulership and the moral deportment of the ruler. As a result, the central “mirror of princes” section of the book nestles comfortably into the discussions that precede and follow it. The opening section (books 1–3) touches on an eclectic grab bag of threats to individual probity in any court setting—from the proclivity of courtiers for what he calls the “immoderate mania for hunting” to the dangers attendant upon familiarity with the rich, and from the risks attaching to dabbling in astrology (“the way of damnation”) to the corrosive omnipresence of pride, ambition, hypocrisy, and flattery.<sup>140</sup> And when, later on in the work (books 7 and 9), he moves to tread in the footsteps of the philosophers, discriminating between Epicurean teachings and those that eschew hedonism and wrongdoing in order to promote true happiness, he returns to some of those same vices, linking them now with tyranny. This he sees as rooted in iniquity and practice not only by kings but also by ecclesiastics and by “private men... in so far as the powers which they possess promote prohibited goals.”<sup>141</sup> Informing the whole work,

whether he is discussing the lives of private individuals or those of rulers, ecclesiastical no less than secular, is the conviction that “nature, the best guide for living well,” is “the parent and custodian of virtue.”<sup>142</sup>

If we ask what, then, did John mean by “nature” and how, exactly, he saw it as promoting virtue, we find him very much aligned as a thinker with the teaching of the twelfth-century Platonists that he himself must have imbibed during the three years he studied under William of Conches. Thus following in this Chalcidius’s Christianizing rendition of *Timaeus* 28e, he states that “nature is the will of God” and, additionally, “the wisdom and goodness of God.”<sup>143</sup> It is, accordingly, lawful and rational, and its regime of law is a universal one holding sway over both the physical world and the realm of human morality. Again, echoing Chalcidius’s version of Plato and insisting that “nothing takes place without a proper cause or reason preceding.” John, in common with some of his learned contemporaries, sees the natural world as a world proceeding via a system of secondary natural causality. That system was ultimately dependent, of course, upon the divine Creator, but it unfolded, nonetheless, and in quasi-autonomous fashion in accord with “nature” or “the laws of nature” (*leges naturae*), terminology which he frequently uses to denote the uniformities evident in “the customary course of events and the hidden causes of phenomena.”<sup>144</sup> And he invokes the conjunction of the sun and moon and the operation of what we would call “gravity” as examples of the operation of such laws or uniformities.<sup>145</sup>

He uses the same terminology, however (and here he is in alignment with Cicero and the *Digest*), to denote the norms of right and wrong which, though they may be disclosed to some of us “by the revelation of grace,” are also accessible to every man by use of his God-given reason. No one, therefore, is able to excuse himself on account of his ignorance. As it is written: “For that which is known of God is manifest in them, for they reveal God.”<sup>146</sup> These norms of right and wrong are embedded in the “law of nature” (*jus naturae*) that governs the realm of moral living and it is “part of duty” for human beings to obey that law.<sup>147</sup>

In this connection Liebeschütz has suggested that “the principles of natural law which... [John] found included in Justinian’s collection, were the main reason for his sympathy with Roman law.” For he viewed it as “a classic expression of the timeless reason with which mankind is gifted.”<sup>148</sup> Certainly the notion of law in general plays an absolutely central role when he turns to matters explicitly political and comes to discuss the role of the prince in the republic and the features that distinguish a tyrant from a prince. This he does after he has introduced the analogy between the microcosm of the living body and the macrocosm of the republic. To the elaboration of that analogy he devotes the greater part of books 5, 6, and 7 of the *Policraticus*, but at the outset, he summarizes it in the following fashion:

A republic is, just as Plutarch declares, a sort of body which is animated

by the grant of divine reason and which is driven by the command of the highest equity and ruled by a sort of rational management. By all means, that which transmits the worship of God... acquires the position of the soul in the body of the republic.... For who disputes that the sanctified ministers of God are his vicars?... [And] just as the soul has rulership of the whole body so those who are called prefects of religion direct the whole body.<sup>149</sup>

Thus while his “republic” appears to be conceived in traditional terms as a unitary Christian commonwealth directed in coordinate fashion by ecclesiastical and temporal powers, John clearly assigns a superior position to the ecclesiastical. As he had insisted in the previous book, “the prince is the minister of priests and inferior [*minor*] to them.” “The sword” or “power of bodily coercion” is conferred upon him “by the hand of the church,” so that while “spiritual authority” is reserved to the papacy, it falls to the prince to exercise “those features of the sacred duties that seem an indignity in the hands of priests.”<sup>150</sup> He is “not permitted to be ignorant of the laws of God.” “All censures of [civil] law are void if they do not bear the image of divine law; and the ordinance [*constitutio*] of the prince is useless if it does not conform to ecclesiastical discipline.”<sup>151</sup> Such affirmations duly noted, it should be acknowledged that the *regnum/sacerdotium* issue does not loom large in the *Policraticus*. In the specifically political sections of the work it is, instead, the prince and the relation in which he stands to the law that is the focus of attention. So that, returning in summary to his organic analogy, John goes on to say:

The position of the head in the republic is occupied... by a prince subject only to God and to those who act in His place on earth, inasmuch as in the human body the head is stimulated and ruled by the soul. The place of the heart is occupied by the senate, from which proceeds the beginning of good and bad works. The duties of the ears, eyes and mouth are claimed by the judges and governors of provinces. The hands coincide with officials and soldiers. Those who always assist the prince are comparable to the flanks. Treasurers and record keepers (I speak not of those who supervise prisoners, but of the counts of the Exchequer) resemble the shape of the stomach and intestines; these, if they accumulate with great avidity and tenaciously preserve their accumulation, engineer innumerable and incurable diseases that their infection threatens to ruin the whole body. Furthermore, the feet coincide with peasants, perpetually bound to the soil, for whom it is all the more necessary that the head take precautions, in that they often meet with accidents while they work the earth in bodily subservience; and those who erect, sustain and move forward the mass the whole body are justly owed shelter and support.<sup>152</sup>

As this effort at summation suggests, and as John’s subsequent elaboration

of the organic analogy makes fully clear, “everyone” being “a member of the other,” the emphasis is on the mutual interdependence of all members of the body politic. The ideal held up for all to follow is the harmonious pursuit of the common good, “the utility of each for all.” But it is quintessentially the prince, on whom is “conferred power over all his subjects,” who is duty bound to concern himself “with the burdens of the entire community.” So far as the republic is concerned, “nature, that best guide for living, is to be followed.” And nature “has lodged all of the senses in the head as a microcosm, that is a little world of man, and has subjected to it the totality of the members in order that all of them may move correctly provided that the will of a sound head (*arbitrium... sani capitis*) is followed.”<sup>153</sup> And to the implicit question about what is to be taken to distinguish a “sound” from an “unsound” head, John’s response is a resounding affirmation of the overriding importance of the law and of the ruler’s obligation to serve the law. And not simply, in this case, law conceived as a tissue of princely statutes, but law, rather, conceived as “a sort of discovery and gift from God,” the “image of the divine will,” making known “the will of equity and justice.”<sup>154</sup> For “the prince is... the minister of the public utility and the servant of equity.” As a result, or so John insists, “one ought not... to hold the opinion that the prince himself is constantly released from law,” for God, “the Greatest King,” imposes his law on all princes.<sup>155</sup> Similarly, if the prince has no reason to fear the penalties of the law, and if “that which most rightfully pleases him in all matters has the force of law,” it is simply “because his determination may not be inconsistent with the design of equity.”<sup>156</sup> And, quoting now the great legal maxim known from its opening words as the *Digna vox*, “it is indeed an adage worthy of the majesty of kings that the prince professes an obligation to his own laws.”<sup>157</sup>

So fundamental, indeed, is his emphasis in the *Policraticus* on the supremacy of law, equity, and justice that, for John, it appears to be nothing less than definitional. For him, that is to say, the prince is by definition the ruler who binds himself to follow the law and vindicate the justice and equity that reflects the will of God, and who, committed to serving the public interest, strives always for the common good. As such, the prince “is agreed to be a sort of deity on earth” and “image on earth of the divine majesty.”<sup>158</sup> The tyrant, on the other hand, being one who disregards the laws and “oppresses the people by violent domination” rather than being “an image of divinity,” is “the image of the devil” (*imago diaboli*). “The origin of tyranny is inequity and it sprouts forth from the poisonous and pernicious root of evil and its tree is to be cut down by an axe anywhere it grows.” In effect, *the public* tyrant, “as an image of depravity,” is for the most part even to be killed.<sup>159</sup>

To this blunt advocacy of tyrannicide, the focus of an excessive amount of attention on the part of commentators,<sup>160</sup> John returns more than once in the *Policraticus*. But he does so only in comparatively vague or general terms, hedged around by qualifications and undermined by the sense that those who



groan under the burden of the tyrant might do better, like David, to trust in “the compassion of God to free... [them] without sin.”<sup>161</sup> Other issues bulk much larger in his political thinking and come through much more clearly. When one steps back, indeed, and attempts to come to terms with that body of thinking as a whole, what stands out is the centrality and consistency of his emphasis on nature and the natural law as the firm bedrock on which to ground the moral principles that should properly inform the task of rulership in political society. Whatever the ambiguities attaching to that term, his was indeed a species of “political naturalism.” Should such, indeed, be needed, the *Policraticus* may well serve as a salutary reminder that a form of political naturalism had rooted itself in western European intellectual soil a good century before the reception and translation of Aristotle’s *Politics*.



## 5. Recuperating the Past (iii)

### *Fruits of the Encounter with Greek Antiquity*

BY THE TWELFTH century, a species of “political naturalism” had made its presence felt on the European intellectual scene, and by the end of the following century, with the historic penetration of Aristotelian modalities of thought into political thinking, the evocation of “nature” and the “natural” had stepped forward to take up an important position under the bright lights of center stage. Time now, then, as we turn to the political thinkers of the thirteenth century, to redeem the pledge made in the last chapter to focus somewhat more intently on the meanings characteristically attached to the word “nature” (Greek *physis*; Latin *natura*). And that turns out to be no easy task. Addressing the issue over seventy years ago, and deploying to that end an exceedingly sharp conceptual scalpel, Arthur O. Lovejoy succeeded in teasing apart no less than sixty-six senses in which the word “nature” was used in antiquity.<sup>1</sup> Here my own ambition, happily, is a good deal more contained. My intent is simply to probe a little in order to illuminate differences in the ways this word was characteristically employed in the twelfth century by the masters of Chartres and Paris discussed in the chapter preceding, and in the later thirteenth by those scholastic figures whose political thinking resonated in greater or lesser degree to newly familiar Aristotelian frequencies.

In pursuing this task one immediately encounters two impediments to correct understanding. The first is presented by the fact that our word “nature” stems from the Latin *natura*, the word habitually used to render the Greek *physis*. The two words, however, bring with them very different connotations. The Latin *natura* “signified a thing’s due position, stage, or status in an ordered scheme” and is affiliated with a verb connoting birth, beginnings, the primitive. *Physis*, signifying “the immanent purpose springing from within a thing and reaching out to its highest goal,”<sup>2</sup> connects with a verb which suggests the notion of “growing” and includes the “process of ‘growth,’ and the condition of being ‘grown,’ as well as the beginnings of ‘growing.’”<sup>3</sup> In contrast with *natura*, the emphasis is less on source than on goal, less on beginnings than on culminations, on the condition of being grown. Thus so far as Aristotle was concerned, “to the old question: which comes first, the chicken or the egg?” the answer is clear: “the chicken comes first—in understanding eggs, the chicken that is to be.”<sup>4</sup>

The second impediment to understanding, though it concerns the nature of causal explanation, is in fact closely related to the first. In his attempt to render intelligible the way in which things in the world are constantly

undergoing change, Aristotle postulated the need to identify no less than four distinct “necessary conditions,” “reasons why,” or “determining factors,” “responsible for” any such process of change. These four *aitia* Cicero rendered into Latin as *causae*, and embedded in the Western philosophical tradition, they have come to be known as the four “causes”—material, formal, efficient, and final.<sup>5</sup> Randall helpfully describes the *formal cause* as responding to the question “What is it?”; the *material cause* to the question “Out of what is it made?”; the *efficient cause* to the question “By what agent?”; and the *final cause* to the question “For what end?”<sup>6</sup> Nurtured as we ourselves are, intellectually speaking, in the disenchanting cradle of modernity and tending already to think of nature in terms of beginnings rather than ends, we habitually and almost instinctively restrict the meaning of “cause” to what it is that “occasions or effects a result,” especially to “an agent that brings something about” (thus *Webster’s Collegiate Dictionary*). When we think about causality, that is to say, we tend to think exclusively in terms of *efficient* causality. Aristotle, on the other hand, while committed to the view that knowledge of all four causes is needed to render a process fully intelligible, gave a certain priority to *final* over efficient causality. If that is true of his natural philosophy, and it is, it is also true, understandably and indeed quintessentially so, of his ethical and political thinking.<sup>7</sup> The latter are impregnated with teleology, and the appropriation of that teleological orientation is among the clearest of the features distinguishing those late thirteenth century political thinkers who, in the wake of the translation around 1260 of Aristotle’s *Politics*, appropriated for their own purposes Aristotelian modes of thought.<sup>8</sup>

Among those thinkers, did space permit, attention might profitably have been paid to such scholastic figures as Peter of Auvergne (d. 1304), Ptolemy of Lucca (d. ca. 1326), Henry of Ghent (d. 1293), Remigio di Girolami (d. 1319), and Godfrey of Fontaines (d. 1306), all of whom wrote on matters political. Some of them were probably pupils of Thomas Aquinas, and all were prominent intellectuals in their own era. Their names, however, would be recognized today only by a smallish coterie of medieval specialists.<sup>9</sup> Here, then, I focus my attention instead on three exemplary and closely-linked figures:<sup>10</sup> Thomas Aquinas (d. 1274) himself, of all medieval thinkers the best known and the most widely read today; Aegidius Romanus (Giles of Rome, d. 1316), not exactly a household name to historians of political thought today but author nonetheless of what may have been in the Middle Ages the most popular and widely read of all political writings; and James of Viterbo (d. 1307/8) who, better known today to historians of ecclesiology rather than of political thought, had the distinction of applying Aristotelian modalities of thinking to the universal church itself, conceived, however, as a political community analogous to secular political communities. All of them focus on the traditional topic of kingship in their political writings, but they do so in distinctly nontraditional fashion. We will take up these three thinkers in turn.

Given his stature and historic importance, perhaps we may be forgiven for according to the first of them what may well seem to be a disproportionate amount of attention.

## Thomas Aquinas (1224/26–74)

“Biographical details,” A. P. d’Entrèves once crisply proclaimed, “have little or no bearing on the interpretation of St. Thomas Aquinas’s political thought.”<sup>11</sup> If that is true, it should occasion some relief. The sources leave us with many apparently unanswerable questions about his life, including even the precise date of his birth, and his three most recent biographers continue to disagree among themselves on a number of nontrivial issues.<sup>12</sup> Suffice it to say, then, that Aquinas was born of a South Italian noble family, joined the Order of Preachers (Dominicans) at the age of twenty, received his higher education at the universities of Naples and Paris and at the Dominican *studium* at Cologne, numbering among his teachers at the two last his distinguished Dominican confrere Albertus Magnus (ca. 1200–80). His studies completed, he went on to teach theology at Paris, the papal court, and the Dominican *studium* at Naples. During those years of teaching he became a most prolific author and, along with Albertus Magnus, lent his authority to the controversial view that it was both possible and desirable to harmonize with Christian belief at least a non-Averroistic version of Aristotelianism.<sup>13</sup>

Although Aquinas’s version of Aristotelian views was one subordinated to—or, at least, nestled within—an overarching Neoplatonic perspective,<sup>14</sup> the more conservative and less rationalistic of his scholastic contemporaries proved to be dubious about the viability of the type of harmonious accommodation he was intent upon achieving. Significantly enough, among the philosophical propositions, which Étienne Tempier, bishop of Paris, acting in 1277 on the advice of a theological commission, condemned as contrary to the Christian faith were some “Aristotelian” positions attributable to Aquinas.<sup>15</sup> This may conceivably have hampered the growth of his reputation outside the ranks of his own Dominican order. Within that order, though probably for good educational reasons, attention was for some decades focused not so much on his great *Summa theologiae* as on his earlier academic exercise the *Commentary on the Sentences of Peter Lombard*.<sup>16</sup> Interest in his work at large began to quicken, however, after his canonization in 1323, and in the sixteenth and early seventeenth centuries the Jesuits came to focus intensely on the *Summa theologiae*. But not even then did he enjoy the sort of prestige that came to attach to him in Catholic circles for the better part of a century after 1879. In the encyclical *Aeterni Patris*, which Pope Leo XIII issued in that year, Thomism was endorsed as “an effective antidote to erroneous ideas and methodologies” and was established, accordingly, as the *philosophia perennis* which was to be taught at Catholic seminaries and institutions of higher learning. This move stimulated in turn, and especially so

in the early twentieth century, a great body of textual scholarship and critical commentary on Aquinas's writings and on the historical context in which they were composed. Perhaps as a result, but ironically so since it occurred at a time when Thomism was beginning to lose its proud preeminence in Catholic circles, its importance came eventually to be recognized especially by prominent philosophers working largely in the Anglo-American analytical tradition—people such as G. E. M. Anscombe, P. T. Geach, and Anthony Kenny. In the philosophical world at large, therefore, Aquinas's stock may well stand as high today as it has stood at any time during the post-Cartesian centuries.

Enhanced prestige, however, has not had the effect of precipitating any sort of interpretative consensus. "Thomist" has proved to be a remarkably flexible designation and it has now become necessary to discriminate among a whole array of possible Thomisms. These range from the traditional, somewhat dog-eared, post-medieval version championed in the old Catholic handbooks, via the "existential" Thomism of such as Jacques Maritain and Étienne Gilson or the "transcendental" Thomism associated with the names of Bernard Lonergan and Karl Rahner, to the "Wittgensteinian" or "analytical" Thomism favored by philosophers like Anscombe, Geach, and Kenny, and beyond that, indeed, to a whole, proliferating array of disparate approaches, from that reflecting the concerns of those identified with the "Radical Orthodoxy" project in England to those whose approach has been shaped by Heideggerian sympathies or poststructuralist perspectives.<sup>17</sup> Among the issues in contention among these disparate interpretative tendencies are some that are truly fundamental. Is Aquinas, for example, really to be viewed as an Aristotelian in his basic philosophical commitments?<sup>18</sup> Can he even, indeed, be viewed as a philosopher at all?<sup>19</sup> Such, in effect, is the current level of interpretative disagreement on such matters that Fergus Kerr has recently delivered himself of the judgment that "current readings of Thomas's work are so conflicting, and even incommensurable, that integrating them into a single interpretation seems impossible."<sup>20</sup>

All of this and what it entails—especially for those concerned with epistemology and metaphysics—we can do no more than mention here. But so far as Aquinas's legal, ethical, and political thinking is concerned, and as we turn now to what he himself had to say, three interpretative caveats should be posted.

First, and despite their invocation of his name, we would be wise to avoid taking our interpretative cues from the revisionist version of natural law ethics promoted in the past few decades by John Finnis, Joseph Boyle, Germaine Grisez, and others but criticized by some as embracing altogether too enthusiastically "the characteristically modern ideal of metaphysical austerity" or even attempting to frame a theory of "natural law without nature."<sup>21</sup>

Second, we should likewise be careful to avoid any uncritical embrace of Francisco Suarez's earlier and eminently accessible version of Aquinas's teaching on natural law. Enormously influential across the centuries though it has proved to be, and often taken as an accurate rendition of Aquinas's own thinking,<sup>22</sup> it represents to the contrary a juridified departure from the fundamentally intellectualistic nature of the latter's conception of law. For to the earlier Thomists Suarez in the early seventeenth century improperly ascribed the distinctly voluntaristic teaching that the *binding force* of the natural law, though not its content, was to be ascribed to its legislation by the divine will.<sup>23</sup> But the notion that law emanates from the *will* of the lawmaker was, in fact, an idea that Aquinas had specifically rejected.<sup>24</sup> His was not an "obligationist ethics," not "an ethics of obedience to this or that divine command." His interest in the *Secunda pars* of the *Summa theologiae* was "not on the rules we have to follow but on the kind of people we become as we practice this or that virtue or vice." For him, that is "acting in the full and proper sense"; "acting on command" he consigns to "the same level as that acting which is found in irrational creatures."<sup>25</sup> In order to be able to claim the Thomistic mantle for his own juridified view of things, Suarez was driven accordingly to a rather tendentious manipulation of what Aquinas himself had actually had to say.<sup>26</sup> The latter's "rationalism" or "intellectualism" was such as to preclude the position that Suarez sought to impute to him. And it had deep theological roots.

Third, a caveat of a different sort. Though he invariably bulks large in our histories of *medieval* political thought, the fact is that Aquinas actually wrote no major political treatise. As a result, and in order to supplement what he has to say in his unfinished *De regno: Ad regem Cypri (On Kingship: To the King of Cyprus)* (though his authorship has been challenged, I take the work to be his),<sup>27</sup> one has to tease out his specifically legal and political viewpoint from the complex fabric of his overall thinking. An ever-present temptation when one embarks on that enterprise is to slip into the practice of treating the *Summa theologiae* as a sort of encyclopedia from which, without regard for their specific location within the architectonic of the entire work, individual entries can safely be selected and extracted for display. But that, as Eschmann properly insists,<sup>28</sup> simply won't do.

By Aquinas's lifetime, Peter Lombard's *Sentences* (ca. 1158) had long since established itself in the new universities as the standard textbook on which all aspiring divines, by commenting on it, had to cut their theological teeth. In his own *Sentences* Aquinas had alluded to the notion that was to provide the "structural principle" for his *Summa theologiae*. It was the Neoplatonic conception "of a grandiose circular movement of procession [from God] and return [to him]," with the first part treating of the *exitus*, things as they proceed from their principle, and the second part focusing on the *reditus*, things as they return or find their way back to God.<sup>29</sup> So far as irrational creatures are concerned, their movement to that final end is

necessitated. That is to say, it is extrinsically and providentially determined. If that movement is an ordered and intelligible one, it is so because they are moved by the purposeful, ordering, extramundane intelligence which we call God. With rational creatures, however, their *reditus* to God as their final end is purposefully, intrinsically, and, above all, *freely* determined. Created as they are in the image and likeness of God, endowed therefore with both intelligence and freedom, it is their very nature to act with a view to a known end. That is “human acting in its full and proper sense”; it is “the intention, the end for which one acts” that “specifies human acts as such,”<sup>30</sup> and it is with the intention that moral thinking must necessarily be concerned.

It is, then, on the process whereby rational creatures return to God as to their final end that Aquinas focuses in the “Treatise on Morals” (*Tractatus moralium*—his own term for it),<sup>31</sup> which makes up the *Secunda pars* of the *Summa theologiae* and includes his analysis of law. And therein lies the theological foundation of his whole moral teaching. In comparison with the more fragmentary and digressive treatment that the theologians who preceded him had given to ethical questions, his systematic analysis in the *Secunda pars* of the “human being acting for the sake of an end,” conceived finally as “the end of eternal beatitude,” must have struck contemporaries as quite novel. That novelty would have been inconceivable in the absence of Aquinas’s “readiness to incorporate into his *Summa theologiae* the deepest inspiration of Aristotelian ethical thinking” and, with it, the overriding emphasis on universal teleology, on the fact that “every agent acts for an end,” that “the first among causes is the final cause,” or as he himself put it in his *Commentary on the Metaphysics*, that “although, in certain cases, the end may be last in being, still in causality, it is always prior; whence it is named ‘the cause of causes’ because it is the cause of causality in all causes.”<sup>32</sup>

Such fundamental considerations, I realize, may well seem a bit remote from what we today are accustomed to characterize as “political” thinking. Certainly they stand at some distance, even, from some of the things Aquinas had to say about matters political. I think, for example, of his remarks in the *Commentary on the Sentences of Peter Lombard* about the obedience of Christians to the secular power, or of the advice he gave to the Duchess of Brabant in his little tract *De regimine Judaeorum* (*On the Government of Jews*), where he affirmed, among other things, that it was in accord with the decision handed down in 1215 by the Fourth Lateran Council that “Jews of both sexes and in all Christian lands should on all occasions be distinguished from others by some particular dress.”<sup>33</sup> At the same time, however, those more basic considerations discussed above are not altogether without pertinence to the equally time-bound and historically conditioned justifications he advances on behalf of slavery (under certain conditions), or for the denial of religious freedom, the punishment of heretics, and the “natural” subordination of women to men.<sup>34</sup> And it will, I believe, become evident that such considerations are certainly fundamental to any adequate

understanding of his thinking on matters legal and political as it is expressed in his *Summa contra Gentiles* and his commentaries on Aristotle's *Nicomachean Ethics* and *Politics*, as well as in the *De regno*, his principal political writing and, of course, in the pertinent sections of the *Summa theologiae* itself. It is in the *Secunda pars* of the last—that great architectonic work—that Aquinas develops as an integral part of his *Tractatus moralium* the extended analysis of the nature of law that provides the overarching framework into which what he has to say elsewhere on political matters can appropriately be fitted. It is with that extended analysis, then, sometimes referred to as the “Treatise on Law,” that we would be well advised to make our start here.

Law in general, according to Aquinas, is “a rule or measure of acts in virtue of which one is led to perform certain actions and restrained from the performance of others.” Will, therefore, “if it is to have the nature of law when it commands, must be regulated by reason.” Reason, then, “being the rule and measure of human acts,” and “law, strictly understood,” having “as its first and principal object the ordering [of things] to the common good,” the latter may properly be defined as “nothing other than a certain ordinance of reason for the common good promulgated by the one who has care of the community.”<sup>35</sup>

Straightforward enough, it might seem. But then Aquinas proceeds to sketch in a whole hierarchy of laws—eternal, natural, divine, and human—in so doing revealing (in quasi-Stoic fashion) just how broadly he understands the word “community.” When he comes to focus on the eternal law, he does not hesitate to speak of the “community of the universe (*communitas universi*)” and of God as “the prince or ruler (*princeps*)” of that community.<sup>36</sup> Thus law in general being for him “something pertaining to reason” (*aliquid rationis*) and assuming the primacy of reason over will, not only in man but also in God, he regarded what in later parlance would be called the physical laws of nature as well as the moral and juridical natural law in comparatively “Greek” fashion. He saw both of them, that is to say, as manifestation of an eternal and indwelling reason.<sup>37</sup> The world he viewed as “being ruled by the divine providence,” and he regarded the divine reason governing “the community of the universe” as itself “possessing the nature of [an eternal] law.” In that law “all things to some degree participate, insofar as they derive from it certain inclinations to those actions and ends that are proper to them.” So that eternal law he sees as ordering to their appropriate ends all created beings, irrational as well as rational, and it is to be understood as “the very idea (*ratio*)<sup>38</sup> of government of things which exists in God as the prince or ruler of the universe.”<sup>39</sup> For God is related to the world of which he is the creator and ruler as an artificer is related to his work. As in the mind of every artificer there preexists the idea or plan of the work to be produced, so also in the mind of every ruler there likewise preexists the idea or plan to be followed by those



being governed. That idea or pattern in the mind of God as creator and ruler of the universe is the eternal law—*eternal* because “the divine reason conceives no idea in time,” *law* because what is involved is “the idea of the divine wisdom” moving “all things to their appropriate end.”<sup>40</sup>

Falling under the sway of the eternal law, therefore, are all created beings as belonging to the world of physical nature. That includes, of course, human beings insofar as they are natural objects. Released in midair, a human body, being by nature a dull, gross, and earthy thing, will naturally strive, Aristotelian fashion, to reach its proper place in the universe—and that means the center of the earth. It will, therefore, fall, revealing its subjection as a body to what we would call a law of (physical) nature but which Aquinas describes as the eternal law emanating from the divine reason and identical, in the final analysis, with God himself.<sup>41</sup>

Human beings, however, are something more than bodies. If as bodies they are indeed subject to the eternal law in the same way as all other created beings, inanimate as well as animate, that is far from being the whole story. For they are possessed of reason, and “rational creatures are subject to divine providence in a more excellent way” than are other creatures since they are “themselves made participators in providence itself, in that they control their own actions and the actions of others.” “They have,” he continues, “a certain share in the divine reason itself, deriving therefrom a natural inclination to such [moral] actions and ends as are fitting.” The term “natural law” Aquinas reserves for “this participation of the eternal law in rational creatures.”<sup>42</sup> And he goes on to specify that “the order of the precepts of natural law corresponds to the order of our natural inclinations.” First, “all that makes for the preservation of human life.” Second, “all those instincts ‘which nature has taught all the animals,’ such as sexual relationship, the rearing of off spring, and the like.”<sup>43</sup> Third, and most important,

There is in man a certain inclination to good, corresponding to his rational nature: and this inclination is proper to man alone. So man has a natural inclination to know the truth about God and to live in society. In this respect there come under natural law all actions connected with such inclinations.<sup>44</sup>

Thus far, then, Aquinas’s position amounts to this: that the universe and all that dwell therein are governed by an eternal law, an indwelling order by which all created beings are guided to their appointed ends. Those ends emanate from the divine ideas, forms, archetypes, or patterns in accordance with which God created those things and continues to rule them. Insofar as it concerns man himself—created in his very essence as a rational, moral being; participant by his God-like reason in the divine idea of the good; co-member indeed with God (to borrow Leibniz’s language) in “a common community of justice”;<sup>45</sup> caught up with him in a shared web of morality—thus far, in Aquinas’s schema, the eternal law is to be known as the “natural law.” The



latter is, in effect, the subset of the eternal law that concerns man qua rational being.

In the course of the twelfth century, canonists, drawing ultimately, it seems, on Chalcidius's commentary on Plato's *Timaeus*, had introduced into legal parlance the term "positive law" (*jus positivum*).<sup>46</sup> And if we take positive law to mean a law dating to a certain moment in time and rendering obligatory something that had previously not been obligatory, then neither the eternal nor the natural law, being nothing other than a deliverance of the divine reason, can be classified as positive law. But to these first two non-positive categories of law Aquinas goes on to add two further categories, "human law" and "divine law," both of which are by their very nature species of positive law. These laws are necessary for the regulation of human conduct because man is not gifted by nature with an innate grasp of the precepts of natural law in all their fullness and complexity, but only of certain general, fundamental, and indemonstrable principles. These principles, therefore, have to be supplemented and fleshed out and it is the role of human and divine law to serve that purpose.

Human law does so in that it reflects the efforts of human reason to derive from the "common and indemonstrable principles" of the natural law "more particular dispositions in accordance with which human beings can frame their day-to-day conduct." That law, then, is "directed to the common good" and "promulgated by the ruler of the civil community."<sup>47</sup> Divine law, in turn, achieves the same end via the commands laid down by God's will at different times in the course of history; to the Jews in the Old Law and the Christians in the New, those commands conveyed to men in the divine revelation contained in the Old and New Testaments. Had man been destined, Aquinas adds,

to an end which was no more than proportionate to his natural faculties, there would have been no need for him to have any [further] direction on the part of reason above the natural law and the positive human law which is derived from it. But because man is destined to an end of eternal blessedness, and this exceeds what is proportionate to natural human faculties... it was necessary that he should be directed to his end not merely by natural and human law but also by a divinely given law.<sup>48</sup>

Of the four types of law thus specified, it is the human that is the locus of Aquinas's attempt to incorporate into his own thinking the understanding of political life which Aristotle had unfolded in his *Politics* and elsewhere in his writings. That understanding was incomparably richer and marked by much greater variety than that current among Europeans during the earlier medieval centuries. The essentially Aristotelian division of moral philosophy into ethics, economics, and politics had been known for centuries. But it took the renewed familiarity with Aristotle's *Politics* to impart some substance to the notion of the "political" and to precipitate the crystallization of a brand of knowledge and a tradition of writing focused specifically on the political

dimension of reality.<sup>49</sup> The institution of kingship had dominated earlier medieval discussions about matters political, and, as we shall see, it retained a central place in later medieval thinking on the subject. But the *Politics* was now serving to acquaint medieval people with a richer and far more positive view of political life. It was also serving to draw to their attention the existence of a more varied array of governmental forms than those they were habituated to thinking about. And that made it possible for them to accommodate more readily on the intellectual level to the oligarchic and republican forms of government that were making their presence felt on the contemporary European scene in Italy, the Low Countries, and elsewhere.

During the closing decades of the thirteenth century, then, the Latin patristic emphasis on the Fall and the concomitant understanding of political subordination as conventional rather than natural, as, in effect, a punishment and remedy for sin, a point of view challenged already in the twelfth century, had now to be accommodated to the Aristotelian form of political naturalism. It had to make its peace with the notion that man was by nature a “political animal” (*zoon politikon*), and that it was only through membership in a political society that one can become truly human. For Aristotle, an individual living in a pre- or praeter-political state would be “a poor sort of being, or a being higher than man,” “a beast or a god,” perhaps, but certainly not a man.<sup>50</sup> The end or purpose of the *polis* is something far nobler than that of serving as “an association for residence on a common site, or for the sake of preventing mutual injustice and easing exchange.” It “is not mere life” that it exists to promote but “a good quality of life.” “Any polis,” therefore, “which is truly so called, and is not merely one in name,” must devote itself to the end of encouraging nothing less than goodness.<sup>51</sup> Hence the amount of time devoted in the *Politics* to matters educational and to the training of the citizen in “virtue.” Hence, too, the fact that Aquinas, in moving to embrace Aristotelian political ideas, was accepting the bracing challenge of trying to come to terms with a novel view of the very purpose of political association: the idea that it existed to make possible not only man’s physical survival but also his moral and, indeed, his spiritual perfection.

Although Aquinas’s response to that challenge was fraught with difficulties and ambiguities, some of them significant enough to give rise to clashing interpretations,<sup>52</sup> his response was one crucial to the subsequent development of European political thought. His careful analysis of law, its nature and variety, furnished him with a coherent conceptual framework into which a discussion of political society could appropriately be inserted. The crucial move he made in response to the challenge confronting him was to firmly situate that discussion within the order or economy of creation, distancing himself thereby from the earlier medieval preoccupation with original sin, the Fall, and its consequences for the nature of human society.

The possession of property, then, and the existence of inequalities of one

sort or another Aquinas saw as natural to man even in the prelapsarian state of innocence. If it was only as a result of the Fall that slavery or servile subjection had come into being, that was not the case with *civil* subjection to a political authority established to care for the common good.<sup>53</sup> He came, as a result, very close to severing any lingering connections political authority might seem to have with the economy of salvation. Testimony to that fact is his willingness (in this, like Innocent IV)<sup>54</sup> to recognize the legitimacy of pagan governments even when they exercise political authority over members of the faithful. For “government and dominion are grounded in human law,” whereas the distinction “between the faithful and infidels is from divine law,” which, being “a law of grace, does not abolish human law which is founded upon natural reason.”<sup>55</sup> So far, then, as the larger philosophico-theological context goes, the setting of politics for Aquinas is that of *natural* theology rather than the *revealed* theology of redemption.<sup>56</sup> As a result, and in remarkable degree, he was able to absorb and relocate within a Neoplatonized Christian framework Aristotle’s teleologically oriented version of political naturalism.

Understandably, this process of absorption is reflected unambiguously in the commentaries he wrote on Aristotle’s *Nicomachean Ethics* and *Politics*. There he speaks of man as being “by nature a social animal” (*homo naturaliter est animal sociale*), one “destined by nature to form part of a community which makes a full and complete life possible for him.” It is life in such a community, after all, that “enables man not merely to live, but to live well” (*bene vivere*), that is, to attain to a “life of perfect sufficiency” in the moral no less than the material dimension of living.<sup>57</sup> That community which is “among all human communities the most perfect” is, of course, the “political community” (*communitas civitatis*). It is a community which is “in itself ordained to make possible a sufficiency of human life,” and which as “the object and final aim of all lesser communities” is “the most important thing constituted by human reason.”<sup>58</sup> And although Aquinas’s *De regno*, his sole explicitly political writing, is essentially an incomplete collection of fragments,<sup>59</sup> it clearly exhibits the same Aristotelian understanding of the nature and purpose of political society and is, in fact, replete with quotations from the *Politics*.

That work he begins with the affirmation that “it is natural for man... to be a social and political animal, to live in a group,”<sup>60</sup> and he is firm in the view that political society exists not simply to ensure material well-being but rather to make possible the life of virtue. Men, he insists, “form a group for the purpose of living well together, a thing which the individual living alone could not attain, and good life is virtuous life. Therefore, virtuous life is the end for which men gather together.”<sup>61</sup> In so arguing, of course, Aquinas is imposing an Aristotelian teleological orientation upon a work that belongs to the traditional medieval *speculum principum* genre. It is understandable, then, that when he comes to discuss the “directive principle” needed to govern the

political community as an entity ordered to an end (having first alluded to Aristotle's classification of constitutions), he should depart somewhat from Aristotle and straightforwardly affirm monarchy to be his own ideal and "the government of a king" to be "the best."<sup>62</sup> In support of that position, and affirming that "in all things nature does what is best," he points out that "every natural government is government by one." Such is the case in every species of government, from that of the "king bee" over the bees to that of the one God over the universe as a whole.<sup>63</sup>

Here one can detect once more echoes and harmonics of that Hellenistic philosophy of kingship which, as we saw in the first volume of this series, having been mediated by Philo Judaeus, and Eusebius, had come to be domesticated in the political thinking of Christian antiquity and medieval Byzantium.<sup>64</sup> Man, Aquinas points out, is a microcosm paralleling the macrocosm not only of the political community but also of the very universe itself. What the soul is to the body, the king (a "shepherd to his people") is to the kingdom, and God is to the world.<sup>65</sup>

The position of king, then, is clearly an elevated one. Behind his authority stands the law, both natural and divine. As St. Paul insists (Rom. 13), those who resist such authority "bring upon themselves damnation."<sup>66</sup> Always assuming, one should add, that the ruler has a "just title" to his office, that he is no usurper, and that he refrains, further, from commanding "things which are unjust." For obedience is required of subjects only "to the extent that the order of justice requires."<sup>67</sup> The king's rulership is to be regarded as just rather than perverted, and he deserves the name of "king" rather than that of "tyrant" only insofar as he serves the common good rather than his own personal interest.<sup>68</sup> And it is law, of course, that is the guide to the common good. Accordingly, it is significant that although Aquinas cites the celebrated Roman legal maxims *quod principi placuit legis vigorem habet* and *princeps legibus solutus est*,<sup>69</sup> he does so in a manner so highly qualified as to blunt their absolutist edge. If it is "to have the authority of law" rather than itself becoming the source of evil, the will of the prince "must be regulated by reason when it commands." As for the prince's being allegedly above the law, that is true only with respect to its constraining force (*vis coactiva*), which, after all, derives from his own power as ruler. With respect to its "directive power" (*vis directiva*) the prince, conforming in this to what is said in both the *Decretals* and in the *lex digna* of the emperor Theodosius, should voluntarily submit himself to the constraint of the law.<sup>70</sup>

But what if the king, failing to observe the law, lapses into injustice and tyranny? Here, while Aquinas in the *De regno* precludes *private* action against him and rules out tyrannicide as "not in accord with apostolic teaching," he does envisage, under certain circumstances, the possibility of action "by public authority." "If," he says, "to provide itself with a king belongs to the right of a given multitude, it is not unjust that the king be deposed or have his

power restricted by that same multitude if, becoming a tyrant, he abuses the royal power.”<sup>71</sup>

Such corrective moves, then, are not to be ruled out, but they are, after all, no more than measures taken after the fact. Far better to avoid that unhappy necessity by getting ahead of potential problems. To that end governmental arrangements should be put in place and a king’s power “so tempered [*sic temperetur*] that he cannot easily fall into tyranny.”<sup>72</sup> How that was to be accomplished, he assures us, “we must consider in what follows.”<sup>73</sup> Unfortunately, in the *De regno* itself he fails to deliver on that promise. But the Carlyles are surely right when they speculate that had he completed that particular treatise, the promised solution would have been comparable to that advanced in the *Summa theologiae*, which was almost certainly written at the same stage in his life.<sup>74</sup> There, alluding in two places to the classification of constitutions which Aristotle sets forth in the third book of the *Politics* or to the way in which Moses and his successors governed the people of Israel, he does identify a certain type of constitution as the best form of government. It is one, he says, in which “all should in some respect participate in the government.” It is a “judicious admixture of the kingdom in that there is one person at the head of it; of aristocracy in that many participate in the government according to virtue; and of democracy or popular rule, in that rulers may be elected from the people and the whole population has the right of electing its rulers.” It is, therefore, a “mixed government” in which “law is enacted according to the definition of Isidore,... ‘by the common sanction of nobles and people.’”<sup>75</sup> Institutionally speaking, none of this is particularly precise. As a result, commentators have found it possible, at one time or another, to portray Aquinas as an advocate of more or less every constitutional form ranging from royal absolutism to nineteenth-century style constitutional monarchy.<sup>76</sup> But given his lack of specificity on the matter, it seems more prudent to content oneself with the conclusion that his general governmental ideal was that of a “mixed,” limited, or “constitutional” form of kingship, the inbuilt restraints of which might serve to keep a king committed to the observance of the law and the promotion of the common good protecting him, therefore, from the danger of lapsing into tyranny.

To an overall appraisal of Aquinas’s political thinking and how well it relates to the teaching of Aristotle, we will return at the conclusion of this chapter. In the meantime and before we turn to his fellow Aristotelians Aegidius Romanus and James of Viterbo, two residual matters concerning what Aquinas himself has to say call for attention. First, the import of his marked emphasis on the common good and what that emphasis entails for the freedom of the individual. Second, the degree to which his evocation of the natural and divine laws limits, or modifies, his absorption of Aristotelian modalities of thought.

So far as the first of these issues is concerned, nowhere in his voluminous

writings did Aquinas address in systematic fashion the notion of the common good (*bonum commune*). And in what he did have to say about that notion, he fluctuated somewhat in the way in which he handled it.<sup>77</sup> But when he deployed the notion in writing about political society he did so in such a way as to stimulate among some of his commentators anxious questioning as to whether it could “lead to a complete absorption of the individual life in that of the State,” giving it “a kind of totalitarian priority over the individual,” much as Plato had done in the *Republic*.<sup>78</sup> Such questioning is not altogether without reason. Aquinas’s view of the political community is an essentially organic one. That community is, as it were, “a single body,” and it forms a whole to which the interest of the individual citizen is related as a part. “Just as the nature of the part is different from that of the whole,” so, too, is “the common good different in nature from that of the individual.” Further than that, the latter’s essentially “partial interest is ordained or directed [*ordinabile*] to the good of the whole.” For “the good of the multitude is greater and more divine [*majus et divinius*] than the good of one man.”<sup>79</sup>

Strong words, they may be, but we have to understand them in the context of some of the related and more qualified things he has to say on the matter. Thus arguing in support of the claim that “a multitude can be better ruled by one than by several,” Aquinas made the case that “what is a natural unity [i.e., a single person] can be more easily a cause of unity than that which is artificially united [i.e., a group of several people].”<sup>80</sup> In his *Commentary on the Nicomachean Ethics* we may find a clue to what precisely he means by that particular contrast when he similarly contrasted what is a unity of composition or physical continuity, “a unity which may be called absolute,” with “the unity of the political community... [which] is only a unity of order and not an unconditioned unity.” From which he concludes that the parts or individuals that form that political community “can have a sphere of action which is distinct from that of the whole, just as in an army a soldier can perform actions which are not proper to the whole army.”<sup>81</sup> Ultimately, he affirms, whatever the differences between the individual and the whole, “society must have the same end as the individual man.”<sup>82</sup>

Thus, or so d’Entrèves concludes, is “the interplay of man and society... assessed and the value of individual personality secured with all due concession to the new conceptions which were revealed from the reading of Aristotle.”<sup>83</sup> And any doubt lingering on that score can readily be dispelled if one turns to the second of the two outstanding issues mentioned above—namely, the significance of the role he ascribed to natural and divine law. Although some commentators have striven to ground such a doctrine in his thinking, Aquinas himself, admittedly, did not go so far as to elaborate any theory of natural, subjective individual rights.<sup>84</sup> Nevertheless for him, an important measure of individual liberty was safeguarded by the restraint on governmental power exerted by the existence of an objective order of justice. It is only “to the extent that the order of justice requires” that “man is bound

to obey secular princes,”<sup>85</sup> and “human law has the quality of law only insofar as it proceeds according to right reason... and derives [accordingly] from the eternal law.”<sup>86</sup> In the form of the dictates of natural law that order of justice is accessible to the reason of all the members of a political community who possess, as a result, that ability to stand in judgment on the justice (and, therefore, the validity) of human law which Plato had ascribed to the philosopher alone.<sup>87</sup> As a result, the allegiance of the individual subject to the state can be no more than a conditional one.

The conditional nature of that allegiance, moreover, Aquinas goes on to underline by introducing a further constraining factor altogether alien to Aristotle’s vision of political life. If, as we have seen, human law is “subordinated within its own sphere to the Natural Law which is above it,” we now have to realize that in Aquinas’s scheme of things it is also “*excluded* from the sphere of Divine Law which exists alongside it.”<sup>88</sup> If, as the pagan Aristotle had assumed, “the ultimate end of man were some good that existed in himself—the *intrinsic* good, for instance, of living virtuously” which “could be attained by the power of human nature”—then human law would have sufficed and any invocation of a distinct divine law would have been redundant. But for Christians that could simply not be the case. The end of living virtuously, which political society, for Aquinas, certainly exists to promote, is also for him ordained to a further and higher end, of which Aristotle, great philosopher though he was, remained altogether ignorant. That further and higher end was a “supernatural” one, an “*extrinsic* good,” the salvation of man’s immortal soul, the “final beatitude which is looked for after death in the enjoyment of God.”<sup>89</sup> In relation to that higher end, then, a further, divinely established, law is called for, one which is made known to humankind via divine revelation and one which confines the reach of human law to the passing of judgment upon “external acts” alone. Only “God... the divine lawgiver,” he says, “is able to judge the inner movements of the will”; in that particular respect “the practice of virtue... is subject to divine but not to human law.” For Aquinas, it has been said,<sup>90</sup> that “which specifies human acts as such is the intention, the end for which one acts.” If one’s act is to be a moral one, one has to act voluntarily, “deliberately choosing a particular action for its own sake.” For Aquinas this involves a twofold interior action of the will and of intention (*duplex motus interiori scilicet voluntatis et intentionis*), and, of these, “divine law alone is competent to judge.”<sup>91</sup>

Were it the case that the end of eternal blessedness to which living virtuously is ordained as to its end “could be attained by the power of human nature, then the duty of a king would have to include the direction of men to it.” But as it exceeds the reach of human power, its pursuit calls for a higher “divine government.” And that species of government pertains to “that king who is not only a man, but also God, namely, our Lord Jesus Christ,” who has entrusted his kingdom “not to earthly kings but to priests, and most of all to the chief priest, the successor of St. Peter, the Vicar of Christ, the Roman



Pontiff. To him all the kings of the Christian People are to be subject as to our Lord Jesus Christ Himself. For those to whom pertains the care of intermediate ends should be subject to him to whom pertains the care of the ultimate end, and be directed by his rule.”<sup>92</sup>

Aquinas is speaking here, of course, not of “church” and “state” in any modern sense as distinct societies, but of the two systems of governance, temporal and spiritual, which held sway in a unitary Christian society and of the two sectors of human life over which they presided. Beyond situating them in a ranked order of ends, however, he never addressed the precise nature of the relationship between them in any fashion even remotely systematic. We are left, then, confronting the task of trying to make sense of a few scattered and somewhat indeterminate remarks which while seeming to suggest that it is only in spiritual matters that the temporal ruler is subordinate to the ecclesiastical also make an exception for the pope in that to him pertains supreme power in matters temporal no less than spiritual.<sup>93</sup> Not having been given, however, enough to go on, that effort, alas, we make in vain.

## **Aegidius Romanus (ca. 1246–1316)**

Aegidius Romanus (Giles of Rome; Egidio Colonna) appears to have been a student of Aquinas’s in the Parisian theology faculty from 1269 to 1272. But a reading of his *De regimine principum* (*On the Governance of Rulers*) is unlikely to stimulate one to explore the lofty type of speculative considerations to which his master’s work so easily gives rise.<sup>94</sup> Written at some point within the years 1272–81 and, it seems, as a manual of advice to Philip IV of France, the new king to whom it is dedicated, it is, like Aquinas’s own unfinished *De regno*, a contribution to the long-established “mirror of princes” genre of political writing. In composing it Aegidius appears deliberately to have sought to tune in to down-to-earth and “userfriendly” frequencies targeted at the tastes and needs of a fairly general readership. In so doing, he managed also to accommodate some of the fashionable novelties of Aristotelian moral and political thinking to the traditional themes, favored authorities (Cicero and Isidore of Seville, for example), and sententious maxims of advice long since characteristic of his chosen genre. Perhaps, as a result, his work proved to be extraordinarily popular during the Middle Ages, especially with clerics, but also with well-to-do lay folk and even, it seems, with people active in governmental affairs.<sup>95</sup> Though the *De regimine principum* is little read today,<sup>96</sup> there appears to be no reason to dispute the claim of Berges to the effect that the work can properly claim to have been “the most valuable [and] widely-distributed *speculum principum* and in general one of the most frequently read books of the later Middle Ages.”<sup>97</sup>

Testimony to the enduring popularity of the book in the Middle Ages is the fact that it has come down to us in no less than three hundred and fifty



manuscripts, whereas the work of the same title that was cobbled together editorially from Aquinas's *De regno* and its completion by Ptolemy of Lucca has survived in no more than twenty-seven.<sup>98</sup> In 1311 Philip IV had it translated into French, and it found its way by translation eventually into most of the European vernacular languages, from Catalan to Middle High German and Old Swedish to Middle English.<sup>99</sup> Part of the reason for its remarkable popularity appears to have been the ease with which the work lent itself to multiple usage by lay as well as clerical readers. Thus in the third book, which is devoted to the rule of the kingdom "in time of war," aristocratic warriors could find pertinent advice about how to build ships or to conduct naval battles, how to conduct sieges or to build castles capable of withstanding sieges, and so on.<sup>100</sup> Similarly, genteel parents could mine the second book for sage counsel about the education of their children in the liberal arts and in the superior or subaltern fields of study and encounter astringent commentary on those *idiotae politici* who had been trained as lawyers.<sup>101</sup>

Aegidius, then, seems to have been concerned to target a wide range of potential readers and to have been successful in so doing. Neither that concern nor that success should be taken to suggest that he was not a learned man. Learned he most certainly was, and his learning won him from his contemporaries the esteemed title of *doctor fundatissimus* (most well-grounded doctor). If one can sometimes fault him for occasionally tendentious interpretations of Aristotelian arguments, one can hardly deny his familiarity with the Aristotelian texts themselves. The *Politics* he cites by name no less than 230 times; the *Ethics*, 185 times; the *Rhetoric*, 88 times. Aristotle is omnipresent even in the first book of the *De regimine principum*, which concerns not politics directly but matters ethical, focusing sequentially on the king's rule of himself, virtues, passions of the soul, and manners.<sup>102</sup> Indeed, Aristotle makes his presence felt even in the overall organization of the work into three books, which reflects the by now familiar tripartite classification of practical knowledge into *ethics*, or that pertaining to individual virtue; *economics*, or that pertaining to the management of the household; and *politics*, or that which concerns itself with "the most sovereign and inclusive" of all associations, namely, the *polis*.<sup>103</sup> In startling contrast, and in this unlike the vast majority of works in the genre, it contains hardly any references either to the Scriptures or the church fathers. Matters pertaining to the church, its rights and privileges, and its relation to the temporal power it also passes over in silence. If, as Lambertini insists, the primary goal of the work was the formation of a *Christian* prince, it must be confessed that it goes about that task in a surprisingly secular fashion and stands out, among other more characteristic specimens of the *speculum principum* genre, precisely by virtue of that fact.<sup>104</sup>

Interestingly enough, the comparative secularity of its tone did not prevent the adoption of the *De regimine principum* for instructional use in scholastic and university circles. In the manuscripts, its text often appears in

combination with extracts from Aristotle's *Politics* and *Nicomachean Ethics*, and one Dominican author was moved to make an abridgment of it under the title *Compendium moralis philosophiae*—all of which suggests that the work may have been used in the Parisian faculty of arts as a textbook for the teaching of Aristotelian moral philosophy. Or, alternatively, it may have served students studying that subject as a medieval equivalent of the *Cliff Notes* on which, over the years, many a hard-pressed American student relied for a secondhand, arm's-length acquaintance with the contents of the texts he or she was expected to have mastered.<sup>105</sup>

Whether or not that is so, the text of the *De regimine principum* itself makes not inconsiderable demands on the reader. Running to a staggering 155,000 words, it is almost certainly the largest of the works belonging to the *speculum principum* genre. If because of the depth of his learning Aegidius Romanus was lauded by contemporaries as the *doctor fundatissimus*, one has no difficulty in understanding why he was also dubbed more wryly as the *doctor verbosus*.<sup>106</sup> Fortunately, while there is much to be found in the first and second books of the work that is at least of indirect pertinence to politics, as also in the third part of the third (which concerns the rule of the kingdom in time of war), the positions that are central to his political thinking are concentrated in the first two parts of that third book. It is to that section of the work overall, then, that we may confine the bulk of our attention here, in so doing focusing on four fundamental issues.

The first is Aegidius's take on the nature and purpose of political authority. To this question he devotes in somewhat labored fashion the start of the first part of the third book. Here he hews closely to the opening sections of the *Politics* and *Nicomachean Ethics*, to both of which he frequently refers. For him, then, there is nothing conventional about political subordination; it is natural to man.<sup>107</sup> Indeed, and in this unlike Aquinas, he treats slavery in the same way, attributing it not to the effect of sin but (and in this fully aligned with Aristotle) to the fact that some men, lacking in intelligence and the capacity for self-rule, are slaves by nature.<sup>108</sup> With Aristotle he sees the nature of things as residing in their end, completion, or perfection. In that sense man is by nature "a civil and political animal" ordained to live in a *polis* (the word he uses is *civitas* or city), which alone makes possible not simply life or the provision of what is needed for a sufficiency of life but, beyond that, the state of "living well," "according to the law and virtuously."<sup>109</sup> Some men, he goes on to acknowledge, seeking in God's service a more perfect way, forsake life in political community for a solitary life of contemplation in the desert. And such, he notes, fall within the orbit of Aristotle's comment that the man who lives outside the polis is "either a beast or a god."<sup>110</sup>

Having thus endorsed Aristotle's version of political naturalism and with it the teleological cast of his reasoning, Aegidius goes on, and in the second place, to qualify the completeness or perfection of life in the *civitas* by

portraying it as pointing beyond itself or as being ordained or subordinated to a more perfect end and a more perfect form of community. But, and in this again unlike Aquinas, the more perfect end he has in mind is not the supernatural end of eternal beatitude, and the more perfect community is not the kingdom of Christ and its earthly manifestation in the visible church. There is every reason to believe that Aegidius would have had no reservations at all about acceding to such a notion.<sup>111</sup> But he simply does not mention it here. The more perfect community he has in mind responds to the *political* conditions of his own era and is resolutely this-worldly—namely, the kingdom, itself composed of many cities. And the more perfect end in question is the sort of life that such a community makes possible. A single city, after all, may be wanting in one or other of the commodities needed to make possible a sufficiency of life. It may be incapable of defending itself and repulsing the attacks of enemies. It may even be unable to dispose of the degree of coercive force needed to preserve the peace, to restrain evildoing, and to ensure the law-abiding conditions that are the very presupposition for virtuous living. In all these respects, the kingdom is a more perfect form of political community, always presupposing, however, that the king governs rightfully and does not lapse into tyranny.<sup>112</sup>

That particular qualification, as well as his general shift of focus from *civitas*/Aristotelian *polis* to medieval *regnum*, point us toward the third of the central issues in Aegidius's political thinking that we need to address. That issue is the form of government which, having first rehearsed Aristotle's classification in the third book of the *Politics* of six different (good and bad) forms, he concluded to be the best.<sup>113</sup> Here he proves to be notably firm. Kingship, he says, is unquestionably the best form of government, not least of all because it is the most natural, analogous in this (in Platonic macrocosm/microcosm fashion) to God's rulership of the universe and the soul's rulership of the body.<sup>114</sup> And when he speaks of kingship it is hereditary rather than elective kingship he has in mind. For being embedded in customary practice, and custom being "as it were another nature," it, too, is in a sense natural.<sup>115</sup> Moreover, it is not simply hereditary kingship that is in question but the type of kingly lordship that he terms "regal" rather than "political."

On this matter, in order to grasp what exactly Aegidius has in mind, one has to recognize that he appears (unlike Aristotle) to acknowledge no essential difference (or at least something of a continuity) between the forms of governance prevailing in political communities and that proper to the family. Thus, referring back now to the second book of the *De regimine principum* in which he treats of family and household, one can see that he employs terms that are essentially political in nature in order to classify familial modes of governance.<sup>116</sup> And the familial mode of rule being by nature monarchic,<sup>117</sup> that exercise in classification may serve to illuminate what he has to say later about the nature of kingly rule in the political realm.

The fundamental distinction that Aegidius draws with relation to both household and kingdom is one between a *political* and a *regal* form of rule (*regimen politicum*, *regimen regale* or *regale dominium*).<sup>118</sup> Rule in the former sense is rule in accordance with “those laws that the citizens have instituted.” Rule in the latter (regal) sense, however, is rule in accordance with the prince’s own choice and the laws which “he himself has instituted” (*secundum arbitrium et secundum leges quas ipse instituit*).<sup>119</sup> As applied to the family or household, *regimen politicum* is exemplified by the rule of husband over wife in that it is limited by “covenants or pacts.” *Regimen regale*, on the other hand, is exemplified by the rule of father over children, directed to their well-being. And there is also a subset of *regimen regale* which Aegidius calls *regimen despoticum vel dominativum*, namely, the sort of rule that the head of a household exercises over his servants, but for his own good, not theirs.<sup>120</sup>

When Aegidius identifies kingship as the best form of government in the political realm what he has in mind, then, is not merely hereditary kingship but regal kingship, a species of pure or “absolute” monarchy. A form of kingship, that is to say, that is not subject to pacts, covenants, or laws made by the citizenry, one that involves an exercise of royal will and is conducted in accordance with laws that the king himself has made and compliance with which he ensures by his own power and might.<sup>121</sup> Such a king is the *caput regni*, head of his kingdom, more excellent than any other person within it, worthy accordingly of “honor and reverence.”<sup>122</sup> By his power, his virtues, the duties he performs he is nothing less, in effect, than a semideus.<sup>123</sup> Deploying an arresting image, Aegidius describes him as the archer and his people as the arrow that he shoots to an end that is good.<sup>124</sup> For it is the pursuit of justice and the common good that distinguishes true kingship, a natural form of rulership and the best, from tyranny, an unnatural form and the worst. And the norms in accordance with which the common good can be identified are embedded in the laws.<sup>125</sup> For laws, he says, are “certain rules [governing our] actions, ordaining us to the common good, and possessing the power to compel.”<sup>126</sup>

Here there comes into play the fourth of the central issues in Aegidius’s political thinking that calls for our attention. For he devotes several chapters in this third book of his *De regimine principum* to an analysis of law.<sup>127</sup> Somewhat tangled in nature, this analysis is identical with that of Aquinas neither in nomenclature and precise content nor in the profundity of the vision that informs it. In its intent, however, it is not altogether dissimilar. He begins by postulating a fundamental distinction between natural law and positive law. Whereas the former, he says, is universal across time and place, the latter is of human institution at some given time and it varies from place to place. Embedded in the law he designates as natural are three distinct but complexly related types: what he calls natural law “in the strict sense” (*simpliciter*), the law of nations, and the law governing animal behavior.<sup>128</sup> He is, in fact,

working with a fourfold categorization of law: *jus naturale* and *jus animalium*, on the one hand, and both of them “natural”; *jus gentium* and *jus civile*, on the other, both of them “positive”<sup>129</sup> (though the law of nations he also alludes to as “a kind of limited natural law”).<sup>130</sup> As for the first grouping, although Ulpian had described the law of nature as “the law which nature teaches all animals” and which proceeds from “the natural inclinations which we [humans] share with all animals,” and although Aegidius concedes that such inclinations are indeed natural, he categorizes them nonetheless as pertaining to the *jus animalium*. And if this law certainly governs man insofar as he is simply an animal or a body, it does not do so insofar as he is a human being possessed of reason. Only as a rational being can he be said to be subject to natural law in the strict sense which “presents itself immediately to the intellect” (*jus naturale prima facie se offert intellectum*) and, as the Apostle Paul said (Rom. 2:14–15), is written in our hearts.<sup>131</sup>

The basic distinction Aegidius arrives at and works with is, then, that between natural law *simpliciter* and positive law, focusing upon the latter especially in its civil variant. To the extent to which he follows the natural law, the king, ruling justly and pursuing the common good, is superior to the positive law which he himself, after all, has made on his own authority.<sup>132</sup> That positive law may well serve as an “inanimate prince,” but, then, the king is himself nothing less than an animate or living law, and just as the animate surpasses the inanimate so, too, does he surpass the positive law.<sup>133</sup> And in that sense, it is better to be ruled by the best king than by the best law.<sup>134</sup> But if forsaking the counsel of the good and wise men he himself has appointed to guide him, the king departs from compliance with the natural law and, instead of the common good of the community which it is his duty to promote, chooses to pursue his own private interest, he no longer deserves the name of king and has become a tyrant.<sup>135</sup>

At this point in his argument, however, Aegidius, institutionally speaking at least, has reached something of an impasse. It is true that in another work written some twenty years later (1291) he came to envisage the possibility of a people’s being able to depose its ruler.<sup>136</sup> But in the *De regimine principum* he says nothing of that sort and proffers no practical or constitutional solution to the problem of tyranny. Instead he actually stresses the importance of obedience to tyrannous rulers, arguing that a degree of tyrannical rule is less intolerable than the harm that would arise from disobedience and law-breaking.<sup>137</sup> The earlier medieval tradition, notwithstanding the sacrality attaching to kings and to the royal office, had emphasized the imposition of restraints on the free exercise of royal power.<sup>138</sup> In the firmness of his own emphasis on the concentration of power in the hands of the regal king, however, and in his failure to embrace any notion of “mixed monarchy” in which the tempering effects of other constitutional elements could serve to prevent the tyrannical abuse of royal power,<sup>139</sup> Aegidius departs from that earlier tradition. That fact, along with the marked secularity of the *De*

*regimine principum* and the degree to which it reflects a thoroughgoing absorption of Aristotelian modalities of thought, serves to underline the historical significance of that work and the importance of Aegidius as a political thinker. To assert, as does McIlwain, that he was “one of the greatest names in the history of political thought in the later Middle Ages” may well smack of exaggeration.<sup>140</sup> But McIlwain bases that judgment not on Aegidius’s contribution in the *De regimine principum* alone, but also on the novelties ventilated in his later *De potestate ecclesiastica*. And we must wait until a later chapter in order to address the strength and significance of that work.<sup>141</sup>

## James of Viterbo (ca. 1255–1307/8)

If Aegidius Romanus had been a student of Aquinas's, James of Viterbo, his younger contemporary and fellow member of the Augustinian Order of Hermits, was, in turn, a student of his at the University of Paris and succeeded him there in 1292 as Augustinian regent-master. In 1300 James was moved back to Italy to take charge of the Augustinian *studium generale* at Naples. In the following year and during the course of the historic clash between Pope Boniface VIII and Philip IV of France he entered the lists on the papalist side, writing his *De regimine christiano* (*On Christian Government*) and dedicating the work to the pope. He became archbishop of Benevento in 1302 but was almost immediately translated in order to become archbishop of Naples. That office he held until his death in 1307/8.

The *De regimine christiano*, then, was the off spring of crisis, and James in no other work took it upon himself to comment on matters political. But the treatise is a good deal more than a merely occasional piece or a contribution to the controversialist literature of the early fourteenth century. Because of that, I choose to treat it here among the first great attempts to apply Aristotelian modes of thought to medieval political conditions rather than later on in the context of the great dispute that stimulated its writing. But even had it been no more than a piece of controversialist writing, it would also have been eminently deserving of our attention. It is, in effect, an impressively lucid, well-planned, and well-executed treatise, which Dyson rightly describes as “a work of subtlety and sophistication,” an unquestionably significant “contribution to the great conflict that was to bring to an end the papacy’s claim to supremacy in temporals.”<sup>142</sup> At the same time Dyson is surprisingly dismissive of Arquillière’s description of the work as the oldest contribution to the genre of treatises on the church, judging it himself to be “somewhat unremarkable as an essay in ecclesiology.”<sup>143</sup> “Unremarkable,” however, strikes me as the last way to characterize the *De regimine christiano*. To do so is to overlook the significance of the fact that James treats the church (the Church Militant no less than the Church Triumphant) quite literally as itself a “kingdom” (*regnum ecclesiae*; *regnum ecclesiasticum*). It is also to overlook

the systematic way in which he spells out the consequences of conceiving its essential nature in that way. In this respect, however, Dyson is not alone. As one peruses what modern commentators have had to say about the treatise, it is hard to escape the feeling that they take the claim that the church is itself a kingdom with something of a pinch of salt, viewing it as an interesting rhetorical flourish, perhaps, but nothing of greater import than that.<sup>144</sup>

In this, or so I conclude, they are quite mistaken. If the kingship of God and the kingship of Christ were ancient biblical themes, in the New Testament they were associated with a kingdom that was not of this world.<sup>145</sup> By the time James of Viterbo came to write the *De regimine christiano*, however, that kingship had come to take on a distinctly this-worldly hue. As we shall see,<sup>146</sup> it had become increasingly common to view the pope, Christ's vicar on earth, as himself a regal figure possessed of the titles, attributes, and legal prerogatives of the erstwhile Roman emperors and the focus of ceremonial observances and symbolic gestures of the type attaching for long centuries to the sacral kings of yesteryear. What James of Viterbo did was to provide for such developments a coherent theological foundation, reaching out in the process (as had Eusebius and the Anglo-Norman Anonymous before him)<sup>147</sup> to evoke the intricacies of Christological speculation. And the resulting theopolitical construct he went on, of course, to buttress with Aristotelian teleology and a species of Aristotelian naturalism.

When James, then, asserts that “the Church is most rightly, truly, and aptly called a kingdom,” and when he goes on to insist that “just as the Church is called the kingdom of Christ, so truly can she be called the kingdom of his vicar, of the Supreme Pontiff, who is truly called, and is, a king,”—when he speaks in this way,<sup>148</sup> we would do well to take his words at face value. He means, in effect, precisely what he says. And in his effort to elucidate and specify what this central insight might entail, he comes at the matter from two different directions. First, and, as it were, from below, he deploys largely though not exclusively philosophical arguments of Aristotelian provenance. Second, he proceeds from above, turning now to scripturally and patristically grounded arguments, theological and, more specifically, Christological in nature. To the first type of argument, under the heading of “On the Glory of the Ecclesiastical Kingdom,” he devotes much of the first and shorter part of his treatise. To the second he devotes the second and longer part, which is organized in the form of a discussion of “the power of Christ the king and his vicar.”<sup>149</sup>

So far as the first of these approaches goes, he evokes Augustine's division of human communities into three types, household, city, and kingdom; concedes that “an area of territory and a collection of many towns may be called a kingdom”; and argues that “a kingdom, properly so called is nonetheless an association of peoples and races, so named from the one who governs the multitude: namely from the king.”<sup>150</sup> Citing the first book of



Aristotle's *Politics*, he goes on to argue that the establishment of all three types of community "has come about through the natural inclinations of mankind itself" for "man is by nature a social animal." But among men a certain order prevails, both of temporal priority and of perfection. In terms of temporal priority, "the household comes first, then the city, then the kingdom." In terms of perfection (or self-sufficiency), however, the "city is more perfect than the household and the kingdom than the city." "For that which is prior in perfection is posterior in generation and time," and "that which is more imperfect is a part of the more perfect and contained in it," with the less perfect being "ordered to the more perfect as to an end," for "the good of the part exists for the good of the whole."<sup>151</sup>

The "whole" that he has in mind when he speaks in this tract of the church as a kingdom is not the institutional ecclesiastical corporation in the narrower sense of the clerical corps but the broader congregation of the faithful, laity no less than clergy—in effect, the unitary Christian society in its entirety. The kingdom of the church in that all-embracing sense is, then, by virtue of being one, holy, Catholic, and apostolic,<sup>152</sup> the most self-sufficient of communities. Responding to every physical and spiritual need of human kind and being ordained to the greatest good, it is, indeed, the most perfect of all communities.<sup>153</sup> As such, it enjoys the most perfect form of government, namely, monarchy. And that is the most perfect form, it should be noted, because it is also the most natural,<sup>154</sup> a form which the church shares not only with nature as a whole, in that nature is ruled by one God, or with natural creatures like the bees who are ruled by a king bee, but also with the temporal kingdoms of this world even if their kings are pagan. For the *legitimacy* (if not the perfection) of such pagan monarchies he does not hesitate to affirm on the grounds, precisely, of their being "due to an inclination of nature."<sup>155</sup> Thus:

The institution of temporal power [in general] has its being in a material and incomplete sense from the natural inclination of man and, for this reason from God, inasmuch as nature is the work of God; but that as perfected and formed it has being from the spiritual power, which is derived from God in a special manner. For grace does not abolish nature, but perfects and forms it; similarly, that which is of grace does not abolish that which is of nature but forms and perfects it. Hence, because spiritual power has to do with grace, and temporal power with nature, the spiritual therefore does not exclude the temporal but forms and perfects it.<sup>156</sup>

Perfection, then, stemming from grace, it is understandable that of all kingdoms, not excluding those whose natural legitimacy has been perfected by grace, the *regnum ecclesiae* should lay claim to being the most perfect. It is, after all, the "kingdom of God" on earth or "kingdom of Christ" or "kingdom of heaven"—all such terms being used of "the Church [Militant] of the present time, which strives on earth" as well as of "the Church



Triumphant” which “rejoices in heaven.” These together form one kingdom, not two, “because both have the one king, namely Christ, who reigns in both, though in different ways. And, so far as the visible church on earth is concerned, there Christ rules through “His vicar... the Supreme Pontiff, who is truly called, and is, a king.”<sup>157</sup>

When he speaks in this way, of course, James is no longer approaching his subject (as it were) from below and mining the naturalistic approach to politics embedded in Aristotle’s *Politics*. Instead, and leaning heavily now on the version of Augustine that by his day had become traditional (the essentially theocratic pattern of thought which Arquillière dubbed as “augustinisme politique”),<sup>158</sup> his approach has modulated into one from above. Because of Christ’s twofold nature as truly God and truly man, “two forms of power belong to Him, one divine, according as He is the Son of God and God by nature, the other human, according as He is man and the Son of Man.” As God, Christ possesses “a twofold power with respect to creatures: the one with respect to [the act of] creation” whereby he brings forth “something into being from non-being,” the other “with respect to created things.” This latter is a governing power “whereby he leads those things to their appointed end.” The former power James brackets because it is a power that belongs only to the omnipotent God and is not communicable to any creature. It is the latter power that he is concerned with in this treatise, for it is “by reason of government” that “God himself is properly called a king.”<sup>159</sup> And Christ, he adds, is “called the king not only of the heavenly and eternal kingdom but of the temporal and earthly also, because He dispenses and judges heavenly and earthly things together.”<sup>160</sup>

It was with regard to Christ’s royal power, he says, that the apostle Paul evoked the celebrated words of the Psalmist: “Thy throne, O God, is for ever and ever; a scepter of righteousness is the scepter of Thy Kingdom.”<sup>161</sup> That royal power pertains to Christ both as God and man, but as man he is possessed also of a priestly power, that of mediating “between God and man” and “uniting man with God” through his ministry.<sup>162</sup> But as king Christ is greater in dignity and superiority than he is as priest, for “He is a priest [only] as man, but He is... a king both as God and man.” That difference in status carries over into the *regnum ecclesiae* when Christ confers upon men the two powers, royal and priestly, entrusting to them thereby the continuation as his deputies of his own earthly ministry. Hence, among the prelates of the church the “royal power, which is called jurisdiction, is superior to [the] priestly power, which is called the power of order.”<sup>163</sup>

The reference here, of course, was to what was becoming by James’s day the standard canonistic distinction concerning ecclesiastical power, that between the *potestas ordinis*, the sacramental power which bishops and priests possessed by virtue of having received the sacrament of holy orders, and the *potestas jurisdictionis*, the power of ecclesiastical jurisdiction or

government.<sup>164</sup> But when he comes to focus more intently on Christ's communication of his own power to men, on the nature of that power and the manner in which it is conferred, he paints a somewhat more complicated picture. He does so in two distinct ways: first, in relation to the governing power in general; second, in relation to the power of jurisdiction in particular. In relation to the former he speaks in terms of *three* rather than two kinds of power, adding to the royal and priestly powers of jurisdiction and order a further power of "bringing about miraculous transformations."<sup>165</sup> By the communication of all three Christ makes men sharers in his own governing power, and that power they are to use not for their own advantage but for the good of those over whom they rule, for that is "the true nature of government appropriate to rational creatures."<sup>166</sup> But the third kind of power, that of effecting miraculous transformations, being communicated (in ways we mortals cannot fathom) only to some and more abundantly in the church's earliest years, James sets to one side as not being central to his purpose. He proceeds, accordingly, to concentrate on the priestly and, most especially, on the royal power.

What he has to say about the priestly power is straightforward enough. Having alluded briefly to the type of priesthood grounded in the natural law<sup>167</sup> and to the "imperfect and figurative" priesthood of the Old Testament law which went back to Aaron, he moves on to concentrate on the "true and perfect" priesthood "of the gospel and of grace" which contains "within itself that which is natural and fulfilling that of the law, which was translated to it."<sup>168</sup> This was the type of priesthood that Christ communicated "to the Apostles and their successors and by these to others again," thereby passing down to the clerical hierarchy in the *regnum ecclesiasticum* the priestly power of teaching and of sacramental administration.<sup>169</sup>

All of this is clear enough, but he introduces another set of complications when he turns to the royal power. This he equates with the power of jurisdiction, for, he says, "the principal and especial action of royal power is to judge" and to establish and enforce the laws.<sup>170</sup> But the quintessentially royal power of jurisdiction is not itself a simple thing, and it has to be subdivided in more than one way. And here, though he does not deploy the precise terminology, James comes close to embracing what was to become the standard practice of distinguishing within the *potestas jurisdictionis* a double modality, one pertaining to the internal, the other to the external forum. The former (*potestas jurisdictionis in foro interiori*) concerned the domain of the individual conscience. It was a power exercised above all through the sacrament of penance, a power of binding and loosing that could be wielded only by those possessed of the sacramental "power of order" (*potestas ordinis*) and exercised only over those who had voluntarily submitted themselves to its sway. That was not the case, however, with the power of jurisdiction in the external or public forum (*potestas jurisdictionis in foro exteriori*), which was a coercive power pertaining to a public authority,

exerted even over the unwilling and directed to the common good of the faithful. It was, in effect and in modern terms, a truly governmental power akin to that wielded today by what we call “the state.” As James himself acknowledges, the possession also of the priestly power (*potestas ordinis*) was not an absolute prerequisite for the exercise of the latter type of jurisdictional power, though it was often associated with it in the same person. And it was certainly the power that the canonists had in mind when they ascribed to the papal monarch reigning over the ecclesiastical kingdom the fullness of jurisdictional power (*plenitudo potestatis*).

The terminology which James himself employs is admittedly somewhat different; his own description of the categories of jurisdictional power while it comes close to the standard canonistic classification outlined above is not totally aligned with it. Thus he distinguishes between “a royal power over spiritual things” that is an exercise of jurisdiction and calls also for the possession of the priestly *potestas ordinis* and a similar power of spiritual jurisdiction that does not call for the possession of such priestly power. The former embraces the authority to teach, to confer holy orders, and, quintessentially, to exercise the power of binding and loosing in the internal penitential forum. It comes very close to the canonistic *potestas jurisdictionis in foro interiori*. The latter involves the authority “to judge in spiritual cases of an external character, and to impose spiritual penalties [like excommunication] and to correct and punish,” and it has much in common with the canonistic *potestas jurisdictionis in foro exteriori*.<sup>171</sup>

James departs, however, from the standard canonistic schema and he does so in a very interesting way. That classification concerned, after all, the exercise of jurisdictional power over the ecclesiastical body quite narrowly conceived. James’s departure from that particular schema began by his extension of the notion of “jurisdiction” to embrace not only the type of governing power possessed by prelates but also the royal power exercised over their subjects by temporal monarchs. Having first insisted that the church was itself a kingdom, he was understandably led to insist that the jurisdictional or governing power wielded by prelates was no less royal in its fundamental nature than was that disposed of by temporal rulers. He conceded, it is true, that in order to preclude the encouragement of clerical pride and to foreground the difference between spiritual and temporal kings, the royal title was not customarily used of prelates. But he insisted, nonetheless, that it truly belonged to them and that it was important that “the power of spiritual and temporal princes should not be distinguished in such a way that one is called royal and the other priestly.” For “royal power may truly belong to the prelates of the church as well as the priestly power.”<sup>172</sup>

That said, and the fundamental commonality between spiritual and temporal princes having duly been emphasized, James goes on to explore and to detail what properly differentiates the two powers one from another. This

he does largely in terms of their finality, of the different ends each of them properly serves. The “temporal” or “secular power” (James uses both terms) is ordered to external and “earthly things as an end.” Grounded in human law and in nature rather than grace, it is “earthly” rather than “heavenly,” “corporeal” rather “spiritual.”<sup>173</sup> Its rule extends only to lay folk and, even then, only in temporal matters. For its job is a limited one. It concerns itself only with “the administration of temporal things,” with “outward acts,” “inferior actions,” and “baser tasks.”<sup>174</sup> Its purpose, in effect, is essentially secular in nature, and James uses accordingly the term “secular prince” (*princeps saecularis*) to distinguish temporal king from kingly prelate or “spiritual power.”

The latter, of course, is superior to the former in power, dignity, and perfection. Grounded in grace rather than nature, it partakes of the supernatural rather than the natural, the heavenly rather than the earthly, the spiritual rather than the corporeal. Serving the higher end of leading men to their eternal felicity, it is superior to the temporal power in both dignity and perfection. The temporal is in fact ordered to it “as a secondary end is ordered to the principal one.” Just as effects are comprehended in their causes and the part contained within the whole, so, too, is temporal power contained within the spiritual.<sup>175</sup> All power, the Apostle tells us (Rom. 13:1–7) comes from God. But while the “temporal power has its being in a material and incomplete sense from the natural inclination of man and, for this reason, from God,” insofar as it is “perfected and formed” it “has being from the spiritual power, which is derived from God in a special manner.”<sup>176</sup> “Every act that belongs to the temporal power belongs,” indeed, “to the spiritual” and in a more excellent way. If kingly prelates do not choose to involve themselves on a regular basis in the lowly tasks that it is the duty of the temporal king to discharge, that is because it is unworthy of their dignity and because they have weightier matters to attend to.<sup>177</sup> But that fact should not be taken to preclude their ability to “intervene in temporal matters for some reason and in a special case,” even to the point of punishing and deposing temporal rulers.<sup>178</sup>

At this point James draws the type of analogy between kingly rulers and God that was to enjoy a protracted currency down into the early eighteenth century, being evoked by James I of England in his discussion of the royal prerogative<sup>179</sup> and eventually finding notable expression in the celebrated Clarke-Leibniz correspondence.<sup>180</sup> For James (of Viterbo) asserts that the spiritual power can “in some cases intervene directly in temporal affairs, just as God Himself, though by the common law [*de communi lege*] He acts in things through the mediation of secondary causes, sometimes by a special law [*de lege speciali*] He acts beyond the order of secondary causes.”<sup>181</sup>

It is when he comes to focus specifically on the power of the pope that James is able to draw together many of the threads woven into the complex

fabric of his overall argumentation. Successor of Peter, Vicar of Christ, Roman pontiff, “primate and patriarch,” “universal shepherd and ruler,” “supreme hierarch and monarch of the whole Church Militant,” the pope is not simply king but veritable “king of kings.” That is so whether those kings are spiritual or secular, for “Christ Himself, whose vicar he is, is called the prince of the kings of the earth” whether they are secular kings or those who go by the name of prelates “because they are set before others, which belongs to kings.”<sup>182</sup> So far as those kingly prelates are concerned, hierarchically subordinated as they are in Pseudo-Dionysian fashion on the analogy of the heavenly hierarchy—priest to bishop, bishop to archbishop, archbishop to metropolitan, archbishop and metropolitan to pope—they all derive their royal jurisdictional power via the mediation of the papal king of kings. And that power he has directly in its fullness (*plenitudo potestatis*) from Christ himself in whose royal place he stands and whose regal deputy he is. To Peter Christ entrusted the two keys, “wisdom to discern and power to bind and release,” and he did so in such a way that “through him they might descend to others.” Thus in Peter, it is said, “they were given to the whole Church.” If “Christ conferred power on all the apostles, He nonetheless willed that Peter should have primacy in his power over others,” so that “the apostles... subsequently acknowledged... [their own power] as being from Peter also, as their leader.” “All that power,” in effect, “which is necessary to the salvation of men must be said to exist in him and, through him to be devolved to others, according to participation and in a certain order.” So that, although the pope “governs the various individual churches through the mediation of other shepherds, he can nonetheless exercise immediate kingship over any church whatsoever.”<sup>183</sup>

While these statements would certainly seem to imply that it is the pope himself who, under Christ, is the *source* of all the royal jurisdictional power exercised by the members of the ecclesiastical hierarchy, it may be felt that they are lacking somewhat in precision. The same, however, can hardly be said of James’s statements concerning the relation of the papal king to the secular princes of this world. The *plenitudo potestatis* embraces the fullness of royal as well as pontifical power so that the pope is “superior in dignity and causality to every temporal power.”<sup>184</sup> Secular monarchs possess the royal jurisdictional power only “in a particular and diminished form,” whereas he possesses it in its totality and perfection.<sup>185</sup> If, therefore, he “commands one thing and any temporal prince another, the Supreme Pontiff is to be obeyed rather than the prince.” Indeed, he has “full judgment over all princes and according to every mode of judgment that has been communicated to the spiritual power.” And that, it should be recalled, extends “by reason of crime or fault” to the imposition not only of spiritual but also of temporal penalties, not excluding the extreme penalty of deposition.<sup>186</sup>

I have selected James of Viterbo, Thomas Aquinas, and Aegidius Romanus for attention as exemplary figures among the broader array of late thirteenth-

century commentators on matters political who, in the wake of recovered access to the *Politics* and *Nicomachean Ethics*, resonated in one degree or another to Aristotelian intellectual frequencies. Kingship was central to the political thinking of all three, but, as we have seen, they handled it in very different ways,<sup>187</sup> as they did their handling of the relationship between the spiritual and temporal authorities. If, in his *De regimine principum* at least, Aegidius Romanus chose not to address it, and if Aquinas's references to the matter were no more than glancing, fragmentary, and inconclusive, James of Viterbo was so notably clear on the matter in his *De regimine christiano* as to elicit from a modern commentator the judgment that "it is in this treatise especially that is caught the authentic hierocratic note of the period." For here, "where society is equated with the *ecclesia*, the autonomy proper to the temporal order is suffocated by the primary authority of the spiritual and lost to the demands of an all-embracing Christian society."<sup>188</sup> But among the three authors there are also commonalities. Kingship, if handled differently, remains central to the political thinking of all three; so, too, does the teleologically oriented form of political naturalism that they had all absorbed from Aristotle and, while subordinating it to a species of Christian supernaturalism, were all committed to affirming.

That duly conceded, and standing back now from the specificities that differentiate the ways in which they severally absorbed Aristotelian modalities of thought, one may ask, by way of conclusion, in what degree their political thinking can be said to be genuinely "Aristotelian." Their introduction of the notion of divine law and ecclesiastical government notwithstanding, the answer to that question would appear to be: "In marked degree." The Aristotelian imprint is evident notably in their embrace of a "naturalistic" approach to political life and in their thoroughgoing absorption of the teleological orientation characteristic of Aristotle's ethical and political thinking. Aquinas may have inherited from his scholastic forebears the principle of grace not destroying nature but perfecting or completing it (*gratia non tollit naturam sed perficit*). But, as we have seen, he embraced it wholeheartedly and made it very much his own. So, too, did Aegidius and James of Viterbo. Its harmonics sound at many a moment in their arguments,<sup>189</sup> and all three seem to have assumed that, without danger of collateral damage, they could safely insert Aristotle's thinking into a Neoplatonized Christian framework. Or, more specifically, that they could "perfect or complete" him by placing, as it were, a supernatural Christian coping stone on his immanent, this-worldly understanding of matters political without, by so doing, effecting any real change in that understanding.

Commentators have often taken for granted the viability of that maneuver. But, or so I conclude, incorrectly so. We should not forget that Aristotle's ethical and political teachings were developed in intimate connection with his natural philosophy and metaphysics. And his "natural" world was a world, after all, which in its ceaseless striving to emulate the perfection of God itself

pulsated to the rhythm of the divine. It was a restless but intelligible world in which final causes were ceaselessly at work, one dependent for its change or very motion upon that ultimate final cause, the unmoved mover, the final good which he himself called God. For “upon such a principle,” he tells us, “depend the heavens and the world of nature.”<sup>190</sup> His was not, therefore, the natural world that the Hebraic and Christian tradition bequeathed to the medieval era, a world which, precisely because it was regarded as having been created out of nothing by an omnipotent and transcendent God, was a “disenchanted” world, one from which the divine had been banished. Instead it was a world which at once yearned toward the divine, the good which was its final cause, and at the same time, by virtue of its immanent order, was in some sense suffused with it.<sup>191</sup> As a result, if and when we choose to evoke the notion of “Aristotelian naturalism,” we must be careful to do so in full consciousness of the fact that Aristotle’s idea of the “natural” was one which can itself be said to have comprehended some aspects at least of what under the influence of the Christian tradition we have become accustomed to classifying as “the supernatural.”<sup>192</sup>

When, therefore, these three thinkers, however much they wished to endorse the “naturalism” of Aristotle’s political vision, appeal beyond it to a supernaturally revealed divine law and subordinate it to the notion of a further, divine structure of governance, they work, willy-nilly, to transform it. The divine is drained from nature, the natural end which the political community exists to serve becomes (in Aristotle’s own terms) a sadly restricted and diminished one, and the commonwealth itself takes on the aspect of a secondary and merely *secular* organism. The *duplex motus interiori, scilicet voluntatis et intentionis*, the interior disposition of the will and intentionality which, for Aquinas, resides at the very heart of moral action, lies now beyond the reach of the polity. That reach extends only to the regulation of the external actions of its subjects and citizens. The political authority can act to prevent their doing injury to one another, but it is not clear that it has the power ultimately to shape their characters and so educate them that they may become truly virtuous men.<sup>193</sup>

To say that, of course, is to deny to political society the very purpose for which, according to Aristotle, it came into existence. However much, then, these three thinkers (and Aquinas quintessentially so) vibrate to Aristotelian philosophical frequencies—and of course they all do—the Aristotle whom we encounter in their political thinking is, in fact, an Aristotle transformed in ways no less fundamental for being quite so subtle. We have seen that all three thinkers embraced from their Christian perspective and freely deployed the scholastic principle that grace does not destroy nature but completes or perfects it. From a more purely Aristotelian perspective, however, it remains the case that it might have been less misleading to have framed that principle as a dictum to the effect that grace does not destroy nature, indeed, but does serve to limit or truncate it—in effect, to cabin and confine it in a way that



Aristotle himself would not have understood.

## 6. Proto-Constitutionalist Innovation

### *The Roots of Consent Theory and the Emergence of Representative Institutions*

AS ONE READS THE political writings of the first generation of medieval Aristotelians discussed in the previous chapter—and especially those of Thomas Aquinas—one cannot help being struck by the degree to which their political thinking appears to have been shaped rather by what they had *read* than by the political realities of their own day. Books clearly played an enormously important role in their lives, conveying memories of a very different and foreign past, posing questions sometimes of very ancient provenance, mediating ideas whose “particular go”<sup>1</sup> had survived intact the hostility of time and was capable still of launching thoughts into new and unexpected orbits. Whether or not I am correct in suggesting that what Aquinas embodied was an essentially “truncated” form of Aristotelianism, and whether or not commentators today are at all on target in questioning the rectitude of classifying him as an Aristotelian at all, the marked penetration into his political thinking of Aristotelian modalities of thought is not to be gainsaid. And it is the more striking when one measures it against the comparatively low salience in his political thinking of notions stemming from the proto-constitutionalist norms embedded in the diurnal realities of medieval governmental practice.<sup>2</sup>

In this respect he is not exceptional among his scholastic contemporaries. Along with Aegidius Romanus and James of Viterbo he certainly endorsed the tradition of monarchical rule that was dominant in the Europe of his day and had been for millennia preceding. All three of those thinkers, however, have surprisingly little to say (and still less that is precise) about the degree to which, in the day-to-day business of governing, medieval kings were dependent on the fidelity and collaboration of the great magnates of their realms. Nor do they convey even remotely a sense of the degree to which the bonds that united his *fideles* with the king, always in some measure reciprocal, had with the extension of vassalage matured into a relationship that was legally contractual and capable of imposing real limitations on the exercise of royal power.<sup>3</sup> To consent and the role it played in lawmaking, governmental practice, and the making of kings all three certainly allude, but preoccupied in Aristotelian fashion as they were with final rather than efficient causality, they do so only in passing and without notably clarifying what they take to be the precise nature of the “consent” involved. Despite the claims commentators have sometimes made to the contrary, that is especially true of Aquinas—and ironically so, given the fact that during the course of his day-to-day living he

must have become intimately acquainted with and participated in the elaborate consensual and representative constitutional arrangements of his own Dominican Order.<sup>4</sup> From these three thinkers, moreover, we learn nothing about the emergence in their lifetimes of those novel representative instrumentalities that were beginning to make possible the eliciting of a form of community consent even in large territorial kingdoms. And yet without some measure of precision on this score, casual talk about the medieval contribution to the emergence of the modern notion of legitimating political authority via the consent of the governed tends to lapse into a confusing cat's-cradle of anachronism. In order to learn more about this matter of representation and consent, therefore, it will be necessary to turn from the philosophical and theological subtleties with which the scholastic thinkers concerned themselves to the writings of the jurists—to the feudal law books and the writings of civilians and canonists alike and also to the gritty realities of thirteenth-century governmental practice. But before doing so we would be wise to pause for a moment to devote some momentary attention, at least, to what exactly modern political philosophers have in mind when they talk about legitimization by consent.

## **Legitimation by Consent: The Problem of Meaning and the Realities on the Ground**

Arguments about the medieval contribution to consent theory have a long and not, let it be acknowledged, particularly distinguished history. A century ago, indeed, at least in North America, they were predominantly confessional in nature and were largely inspired by Catholic reactions to traditional Protestant stereotyping. Thus from that era come down to us proud Catholic intimations to the effect that it was in the Middle Ages that “modern democracy [truly] had its rise,”<sup>5</sup> of suggestions that “the sources of world democracy are to be found, not in the political doctrines of the Reformation, but in the writings of [those] Catholic thinkers” who “like Bellarmine” mediated to the modern world the democratic legacy of the Middle Ages,<sup>6</sup> of wild claims even, flung in the teeth of apoplectic Protestant denials, that “the Declaration of Independence is an accurate transcript of the Catholic mind.”<sup>7</sup>

As time went on, however, and as interconfessional disagreements came gradually to be pushed to the margins of historiographic respectability, a stimulus for such arguments continued to come from a different source, namely, the distortions sponsored in scholarship and graduate education alike by the traditional (if problematic) periodization of European history into ancient, medieval, and modern. And the issue of the medieval contribution came to be pursued, accordingly, by scholars who, if they may well have had one or other axe to grind, do not appear to have been grinding them with specifically Protestant or Catholic targets in mind. Here, picking up the torch from Otto von Gierke and John Neville Figgis before them, McIlwain and the

Carlyles, Laski and Gough, Sabine, Lecler, and others too—all of them were at pains to stress the importance of the legacy which the medieval theorists of “popular sovereignty, contract and consent” had passed down, across the age of Reformation and religious war, to the constitutionalists and consent theorists of the early modern era.<sup>8</sup> It was left for Walter Ullmann, that doughty defender of the relevance of medieval studies and in the past half century perhaps the most distinguished historian of medieval political thought, to reaffirm that stress, to put that point with his characteristic force, and, speaking at Baltimore, to relate it to the American revolutionary experience. “There is to my mind,” he said, “a direct lineage from Locke back to the feudal compact and consent in the Middle Ages, and forward to the Declaration of Independence.... The government for which Locke supplied the theory was in its essentials the heir of a government originally based on feudal law, principles and practice and the feudal contract.”<sup>9</sup>

That ringing assertion of the significance of the medieval political legacy is characteristically clear, firm, and forceful. And while it is open to a whole array of challenges, it gains in cogency if one is moved to attempt an assessment of that legacy from some sort of world-historical perspective. In this series at least, that is my intent. For I am moved by the conviction that from such a perspective one is less likely to miss the sheer singularity of those features of our Western cultural landscape whose familiarity is such that it lures us into taking them to be the deliverances of nature.<sup>10</sup> Not least among those singular features is that theory of legitimation by consent which, though it came to dominate European political thinking only from the era of Hobbes to that of Kant, has contrived so to shape our liberal democratic commonsense that we are persistently tempted to take it for granted. And yet, historically speaking, it stands out as a very singular theory, the outcome of a very particular and complex coalescence of a series of disparate developments.

While some of those critical developments clearly postdate the centuries conventionally classified as medieval, others, which have to be classified as preconditions, are clearly medieval in provenance. That much, surely, is no longer in doubt. What remains in question, however, is whether it was in the medieval or the early modern centuries that the critical intersection of all the pertinent elements took place. If one is to tackle that particular question with any hope of being successful, one has to start out with a reasonably clear sense of what the modern notion of legitimation by consent actually involved. Here the framework which Alexander Passerin d'Entrèves used to organize his *Notion of the State* can be called upon for help. Following closely on the heels of Max Weber, he deployed two distinctions: that between the state regarded as “might or mere force” and the state regarded as “power,” and that between the state regarded as “power” and the state regarded as “authority.”<sup>11</sup> With the first of these terms, as the word itself suggests, the state is viewed in purely factual terms as the expression of force, an entity capable of imposing its commands even in the face of resistance, the important attribute, accordingly,

being effectiveness, the ability to see to it that those commands are obeyed. With the second and third of these terms, while choosing to employ the words “power” and “authority,” d'Entrèves chooses also to give them very specific meanings. “The State regarded as power,” he says, “is the State of legal theorizing, where power means force qualified by law, force with the sign ‘plus’ attached to it.” Here the concern is primarily “with the validity or ‘legality’ of commands. The power of the state is a legal power, conditioned by the existence and observance of law, ‘valid’ only in so far as it is legally determined and appointed. Where law ends, power ends.” But “legality” is not to be confused with “legitimacy.” And we can speak of legitimacy only when the power of the state, however legally exercised, is so grounded in a justification of moral and philosophical nature that the acquiescence of the subject or citizen deepens into obligation. As d'Entrèves puts it, “We should not assume that we have fully unraveled the notion of the State unless we are able to explain how force, first legalized as power, becomes in turn legitimate as authority.”

Keeping this terminology in mind, then, it must be acknowledged that it was not finally to the question of “power” but to that of “authority” that the modern theory of legitimation by consent responded. It set out to explain political obligation or legitimacy not in terms of divine or prescriptive right, of aristocratic superiority, of the necessities of the common interest, convenience, or the “natural” status of political life, but rather in terms of the freely given consent of the governed. So far as political life is concerned, that is to say, the theory sought to ground the obligation of the subject or citizen in the realm not of final causes but of efficient, not in the ends that governments exist to promote but in the source from which they derive their powers. More specifically, it sought also to ground political legitimacy and obligation in consent conceived in a very particular way—not simply as the agreement of the community as a whole but as a concatenation of discrete acts of autonomous individuals. And resonating to the Hobbesian view that there is “no obligation on any man, which ariseth not from some Act of his own; for all men equally are by nature free,”<sup>12</sup> the theory regarded that obligation, accordingly, and in some very significant measure, as self-assumed.

In order to set in bold relief the uncommon nature of this way of thinking it is not even necessary to reach for comparisons with political or theopolitical notions prevalent in cultures which have not fed directly into our own civilizational heritage.<sup>13</sup> Reference here to the pioneering political speculations of the classical Greek world should suffice. That speculation had characteristically focused on the realm of final rather than efficient causes, on the dimensions of the “good” political society rather than the presuppositions of the merely “legitimate” one.<sup>14</sup> The modern conceptions of will and autonomous individuality were adumbrated in only the haziest of fashions; the problem of political obligation, accordingly, can scarcely be said to have arisen, and consent (when invoked at all) was assigned as a result to a merely

instrumental role.<sup>15</sup> In comparison with that world of thought, the novelty and singularity of the essentially “voluntaristic” modern approach—which by the late eighteenth century the spokesmen for the revolutionary generation in America could take to be no more than enlightened commonsense<sup>16</sup>—is not to be gainsaid.<sup>17</sup> Hence the importance of the question of historical origins in general and the importance in particular of questions concerning the relevance of the medieval political and intellectual experience to such modern convictions at their most fundamental.

On this very point, however, it has to be conceded that, over the years, discussions of the medieval contribution have not been altogether helpful. Shaped and conditioned by too hazy a perception of the specific features distinguishing modern theories of legitimation by consent from the notions of consent that preceded them, they have all too often been betrayed by an overeager willingness to detect in those latter notions altogether too many “anticipations” of the future. Thus, at one time or another, the roots of modern freedoms, perhaps even the very wellsprings of modern liberal democracy, have been detected not only in the teachings of a whole series of prominent medieval thinkers, from Thomas Aquinas in the thirteenth century to Nicholas of Cusa in the fifteenth, or in the great medieval contributions to representative theory and practice, or in the feudal limitations on monarchical power which those contributions presupposed, but also in the fundamental role that the Roman lawyers had assigned to the Roman *populus* in the conferring of imperial power and even in the allegedly “populist” procedures whereby the various Germanic *Völker* had chosen their kings and called them to account.<sup>18</sup>

This last theory, evoking the myth of primordial Germanic “populism,” was the oldest of them all. It found expression, for example, in the allegedly historical arguments of a Huguenot treatise like the *Franco-Gallia* (1573) of François Hotman and long predated the English civil wars of the mid-seventeenth century. But it was in the Leveller literature spawned by those conflicts that it first rose to real prominence. It went on to enjoy widespread popularity among the writers of the revolutionary generation in the American colonies,<sup>19</sup> gained renewed and, in some measure, racially driven momentum during the course of the nineteenth century, and still proved itself capable of generating residual harmonics in the more recent literature devoted to medieval political thinking.<sup>20</sup> It is only by dint, however, of a rather casual anachronism that the intellectual credentials of this last theory can be presented in any favorable sort of light. Whatever the force of the “elective” process so often associated with the older Germanic kings—in Scandinavia, in west and south Europe, in England—and surviving for centuries in the form of the “people’s recognition” embedded in the coronation rituals of so many medieval kingdoms, it certainly did not involve anything even roughly approximating to legitimation by consent. That holds true whether the consent involved is viewed as a collective expression of the corporate will or as a

concatenation of individual wills. Nor was the limitation of royal power or even the dismissal of royal incumbents based on the implications of any such legitimating consent. Given the sacral status of the ancient Germanic kings (which there has been an increasing if by no means universal willingness to concede),<sup>21</sup> the true ground of their legitimacy must be seen to have lain elsewhere. It lay, or so it seems, in the *Geblütsheiligkeit* possessed by the entire dynasty by virtue of its divine descent, and in the ability of the individual chosen from that dynasty by virtue of his perceived “luck,” *heil*, or *mana* successfully to mediate between his people and their gods, to hold their world together “by relating it to the cosmic forces in which that world was enmeshed,” and to “ensure thereby their well-being and prosperity in peace as well as war.”<sup>22</sup> This being so, “the tribal election of the sacred ruler was not so much a ‘democratic’ institution” as an attempt to assure “the possession of the *mana*-filled, god-sprung king, selected from the royal race for his obvious ‘luck.’”<sup>23</sup> That attempt moreover, it should be noted, is described as being made by the *thing* or popular assembly of the *volk*, itself no “secular” or “democratic” body but one clearly sacral in character, dedicated it may be to *Tiwaz*, sky god, or god of the entire order of the universe, and charged with the maintenance of an order which was itself part of that sacred world order.<sup>24</sup> Hence in Otto Höfler’s formulation, “the *Thing* was not ‘free’ in the sense that its members possessed an unlimited freedom of decision—even the inherited norms and customary laws could not be taken for human inventions and products of will, but as part of the total ‘world-order,’ as independent of men as the structure of the world, but entrusted to men and their consecrated assembly for protection and for continuing realization.”<sup>25</sup>

If, then, one wishes to speak of a specifically Germanic contribution to the rise of modern consent theory (thinking, perhaps, of the royal “electoral” practices or recognition ceremonies that lingered on in the Middle Ages or the sense that kings were in some fashion accountable to their peoples for any serious betrayal of trust), one must do so with an important qualification in mind. One must recognize, that is to say, that such a contribution can have occurred only after those originally theopolitical mechanisms for selecting rulers or calling them to account had come to be understood in a fundamentally different way by being filtered through the conceptual screen which the novel religious and political conditions prevailing in the Middle Ages had interposed between them and their original source.

Perhaps more surprising, something similar must also be said (returning now to an issue raised above in [chapter 4](#)) of McIlwain’s unfashionable invocation in 1939 of the contribution to the formation of consent theory stemming from the republican constitutional arrangements of ancient Rome and mediated to the Middle Ages via the revived Roman law.<sup>26</sup> In this connection, three points in particular warrant emphasis. First, we should recall that in relation to such internal matters the *populus Romanus* being invoked as the ultimate source of legal authority meant, quite specifically, the assembly



in one form or another of the people of the *city* of Rome itself, the prerogatives of which were subject to extensive limitation, both direct and indirect by the rival power of the magistrates.<sup>27</sup> Second, that the popular assembly in the early period clearly had sacral appurtenances and religious functions analogous to that of the Germanic folk assembly. Thus, for example, organized as the *comitia centuriata* it met usually (and as the *comitia tributa* occasionally) on the Campus Martius where there was a very ancient altar to Mars,<sup>28</sup> and it could do so only after the auspices were taken by the appropriate magistrate. Organized as the *comitia curiata* moreover, it sometimes met under the presidency of the *pontifex maximus* to deal with matters pertaining to the sacral law or to those areas of private law (e.g., will making) possessed of religious significance. Or, again, it met to witness the inauguration of the *flamines maiores* (priests) and of the *rex sacrorum*, the king whom the Romans of the republican era still felt it necessary to appoint for religious purposes. Third, that religious matrix apart,<sup>29</sup> it has been insisted that even to the Roman lawyers later on “the principle of the derivation of power from the people had a markedly ‘juridical’ or legal, rather than political meaning.” That is to say it really served as a principle enabling them, if only by recourse to fiction,<sup>30</sup> to represent all the various sources of what we would call law—whether customary, plebescital, senatorial, or imperial—as flowing ultimately from a common source. Thus by appealing to a *lex regia* whereby the people had conferred the whole of its power on the *princeps*, they were able to maintain that principle even during the later empire, “after all the sources of law had dried up... [and] the Imperial ‘Constitution’ had come to be the sole expression of positive law.”<sup>31</sup>

Such expressions of republican constitutional theory and practice were later to be at the disposal of those—medieval civilians, canonists, and publicists alike—who for one reason or another and in one way or another wished to argue for the grounding of the law and of the ruler’s authority itself in the consent of “the people.”<sup>32</sup> But if they could be used for that purpose, it was very much by virtue of the fact that such notions, too, in this like analogous notions of Germanic derivation, were being reinterpreted in more explicitly “political” a fashion by those whose horizons of expectation had been determined by the religious and political conditions prevailing during the centuries subsequent to the fall of Rome. In particular, the comparative desacralization of the political in the wake of the Gregorian “revolution,” the traditionally communitarian nature of ecclesiastical life, the feudal ties binding kings to their chief subjects in a genuinely contractual relationship, the emergence of a myriad of corporate bodies (guilds, universities, cathedral chapters, for example, and cities enjoying *de facto* an extensive measure of self-governance), the high status accorded everywhere to the old customary laws, the general sense that the principles and practices, political and religious, then prevailing had existed time out of mind—all of these and more conduced powerfully to the conviction that the established legal and doctrinal

patterns, as well as the customary governmental and fiscal arrangements, could be altered only with the agreement of all concerned. Hence the understandable preoccupation in theory with consent and in practice with the means whereby it could be elicited, not only in the smaller face-to-face communities but also, via representative mechanisms, in their larger counterparts and even in the great territorial kingdom and the international church itself.

To identify that religio-political complex of principles and practices as the real matrix of later consent theories is not to dismiss as altogether irrelevant the contribution of more ancient notions or practices to the historical development of such theories. And certainly not so for those thinkers who were writing in the context of the small “city-states” of the Netherlands, Switzerland, and especially of northern Italy.<sup>33</sup> With a glad if sometimes overhasty recognition, such thinkers were persistently tempted, it seems, as they peered anxiously into the past, to discern in the republican institutions of Roman and Hellenic antiquity and in the political principles of the classical authors the looming outlines of their own cherished but contemporaneous ideals. Thus, glancing ahead for a moment to the fourteenth century, one can see the great jurist Bartolus of Sassoferrato proceeding from a denial of the idea that the transfer by a *lex regia* of legislative authority from Roman *populus* to emperor was an irrevocable one, to the further claim that in a contemporary city which recognizes *de facto* no superior in temporal affairs jurisdiction continues to reside in the body of the people.<sup>34</sup> And from that claim he draws the conclusion that magistrates in such cities exercise their powers only by delegation and as in some sense representatives of the people, which people retains the right to withdraw those powers or impose limits on their exercise.<sup>35</sup> Something similar may be said of the great political theorist Marsiglio of Padua (ca. 1275–1342), who claimed to ground in the third book of Aristotle’s *Politics* his own blunt definition of law as the coercive command of the entire people.<sup>36</sup>

Given the high status that had come to be accorded to Aristotle and to the Roman law, such arguments carried great weight. But though they were invoked with considerable frequency—and especially by the defenders of republican values in the Italian communes—the pertinence of such classical preoccupations to the monarchies of northern and western Europe was much less marked. And yet it was in the context primarily of those monarchies—not least among them the papal monarchy over the universal church—that the principal and most influential line of development of medieval consent theory and of the representative principles affiliated with it was destined to be laid down.<sup>37</sup> And here, while the legacy of the revived Roman law was everywhere evident, it took a form so profoundly reshaped by the efforts of the canonists that historians have become increasingly prone to referring to it as “Romano-canonical” in nature. The contributions to that line of development were made by men who were engaged, after all, in the

elaboration of a body of law that was still alive and growing. They were made in response to the need to unravel a veritable tangle of legal questions ranging from those touching institutional issues at the level of the universal church to matters pertaining to private law, to the governance especially of ecclesiastical corporations, and to the rights attributable to them. It is in particular upon this last line of development, then, generating as it did a set of institutional innovations of truly historic significance, that we would do well to focus our attention.

## **Romano-Canonical Law, Representation, and Consent**

The innovations in question were themselves stimulated both by theoretical considerations concerning the relation of papal prerogatives to the indwelling and continuing authority of the universal church and by the more practical need, which weighed on lawyers and ecclesiastical administrators alike, to respond to the day-to-day exigencies of government.

The more theoretical considerations concerning the constitution of the universal church, destined to rise to prominence in the fourteenth and fifteenth centuries in the context of the Great Schism of the West, pivoted, as Tierney has put it, on “a central problem of constitutional thought.” “How could one affirm simultaneously,” as the canonists certainly tried to do, “the overriding right of a sovereign [the pope] to rule and the overriding claim of a community [the church conceived as the congregation of the faithful] to defend itself against abuses of power.” In their efforts to explore that issue and to protect in one way or another the well-being of the church, “the canonists anticipated almost every twist and turn of later resistance theory.”<sup>38</sup> In so doing they also laid the foundations for later claims that, on certain critical issues pertaining to the *status ecclesiae* or common good of the church, the ultimate locus of authority lay neither with pope nor cardinals but with the “congregation of the faithful” itself—and, therefore, with the general council by which alone its views could be represented and its “consent” (conceived as “consensus” rather than the formal legal consent of a corporate body) elicited or communicated.<sup>39</sup>

The more gritty issues pertaining to the day-to-day exigencies of government, temporal as well as ecclesiastical, clustered rather around the creation and insertion into governmental practice and constitutional arrangements of representative mechanisms of a very specific type. These were mechanisms that were destined to make possible in the universal church itself and in large territorial kingdoms the eliciting (or, later on at least, the refusal) of consent by the governed to the policies their papal or royal leaders were proposing and pursuing. In their (post-medieval) maturity those representative mechanisms were to become the very presupposition of the liberal democratic, constitutionalist regimes pivoting on the governing activity of representatives of one sort or another with which we today (at least in the

West) are so familiar as to take almost for granted. In their twelfth- and thirteenth-century inception, however, they represented something of a startling innovation, and one restricted to the church and to the secular political entities, national and provincial, of western Europe. Only in the late eighteenth century, in the wake of the American and French revolutions, did they begin their modern rise to more general prominence. And only in the latter half of the twentieth century did they spread far and wide to become a truly global phenomenon. Occasional claims to the contrary, it has to be insisted that neither the great civilizations of eastern and southern Asia or of Mesoamerica, nor our own archaic predecessors in the ancient Near East and the classical world, nor the cultures of medieval Byzantium or Islam gave birth to anything truly comparable. Like the university, in effect, and like diplomatic representation by ambassadors of a strictly plenipotentiary type, the species of representative assembly that proved to be the direct forerunner of our modern parliamentary institutions was ultimately a product of the legal and institutional creativity characteristic of western European life in the twelfth and thirteenth centuries.<sup>40</sup> In this connection, certainly, Umberto Eco's arresting dictum might appropriately be amended to say that it was "the *Latin Middle Ages*" that "turned us into western *political* animals."<sup>41</sup>

Given the extraordinary nature of this development, vaulting explanatory ambition might affirm the need to identify a concatenation of intersecting reasons sufficient *en ensemble* to account for its occurrence. But here we will content ourselves with the isolation of a handful of crucial factors which can be seen to emerge, at least from a counterfactual perspective, as plausible candidates for the more modest role of necessary condition.

Among them the most fundamental, of course, was the prevalence in western Europe of a quite particular version of those institutional forms that comparative historians have customarily classified as "feudal." As we saw in the first volume,<sup>42</sup> these forms reflected the gradual transposition into a more precisely legal and contractual key of those earlier medieval reciprocal rights and duties that had lurked implicitly in older bonds linking a king with his *fideles*, the great magnates upon whose collaboration and agreement he was altogether dependent if he was to exert leadership and govern his kingdom with any measure of success. "It is assuredly no accident," or so Marc Bloch classically asserted, that "the representative system, in the very aristocratic form of the English parliament, the French 'Estates,' the *Stände* of Germany, and the Spanish *Cortés*, originated in states which were only just emerging from the feudal stage and still bore its imprint." But "neither was it an accident," he added, stressing now the "originality" of European feudal institutions and their quite specific nature, "that in Japan, where the vassal's submission was much more unilateral and where, moreover, the divine power of the Emperor remained outside the structure of vassal engagements, nothing of the sort emerged from a régime which was in many respects loosely akin to the feudalism of the West." The right of resistance on the part of vassals

against a king who abused his power in order to encroach upon their lawful rights “resounded in the thirteenth and fourteenth centuries from one end of the Western world to the other [and] in a multitude of texts from the English *Magna Carta* of 1215, via the Hungarian ‘Golden Bull’ of 1222 to the Aragonese Act of Union of 1287.”<sup>43</sup>

That fact serves to underline the pressing need of the rulers of the day to secure for their policies as large a degree of public support as possible. It was a need, of course, that all rulers have felt, but one felt with particular acuteness by medieval rulers, regal popes as well as temporal kings. The power of feudal patterns of thought and behavior, the political conditions of the day, above all, if he really hoped to see his policies implemented, the dependence of the ruler upon the more powerful men and the more wealthy and privileged corporate groups among his subjects—all conspired to increase his need to maximize among them the degree of consent to his policies. But how was that to be achieved? In the smaller city-states where it was possible to assemble in one place the more important members of the citizenry, it might be possible to solve the problem by much the same means as had been employed by the city-states of classical antiquity. That was out of the question, however, so far as the larger territorial kingdoms or the universal church were concerned. There, accordingly, in the thirteenth and fourteen centuries (and on, intermittently, into the eighteenth) rulers turned for a solution to the novel instrumentality of the representative assembly. Of course, “representation” can mean more than one thing. In particular, if a measure of simplification may be permitted, either it can mean “personification”—the symbolic embodiment of a community’s authority in its ruler or “natural” leaders—or, alternatively, it can mean the conscious, legal delegation of the authority of the community to persons chosen to represent it (make it present). Representation, then, conceived as personification or as delegation. It is in the latter, more precise, and technical sense of the term that the new assemblies were distinctively “representative.”

As long as the leading men of the day—the great feudal magnates in secular society and the bishops and abbots in ecclesiastical—could claim convincingly and successfully to represent by personification those over whom they ruled, the need for new machinery was not felt. It was entirely feasible, for example, for a king to assemble at his court by personal summons the bulk of the great barons of the realm, or for the pope to summon the bishops of the universal church to attend a general council. But as, in the course of the twelfth century, a multitude of corporate bodies began to emerge, often possessed of considerable wealth, ecclesiastical bodies or urban communities whose cooperation their bishops or the barons of the realm could not claim to guarantee, it became necessary for rulers to solicit their consent in less indirect fashion, and especially in matters pertaining to property rights and taxation. It was in the Iberian peninsula that the first unambiguous signs of a response to that need made themselves evident when, in the kingdom of

Léon, chosen representatives of the towns were summoned to participate alongside the magnates and bishops of the realm in the deliberations of the great representative assembly or *cortes* held in 1188.<sup>44</sup> In the thirteenth century the same practice came to be followed in some, at least, of the *cortes* assembled in the kingdom of Castile, as also in those of Aragon, Catalonia, and Valencia. In that and the subsequent two centuries comparable representative assemblies came into existence across Europe, from Sweden in the north to Sicily in the south, and from Portugal, England, and France in the west to Poland, Bohemia, and Hungary in the east. It was in the context of these new “parliamentary” developments, then, that the civilians and canonists, the former largely by a direct evocation of Roman public law, the latter largely by a creative manipulation and development of Roman private law (notably certain elements connected with the law of corporations), contrived to make their great contribution.<sup>45</sup>

“Public law pertains to the *status rei Romanae*;... [it] relates to religion, priests, and magistrates.” “Private law,” on the other hand, pertains to “the utility of individuals.” Thus a text in the *Digest* attributed to the Roman jurisconsult Ulpian.<sup>46</sup> So far as public law was concerned, and so far as it touched upon the sovereignty of emperor and pope and the putatively “popular” derivation of their authority, we saw in the last chapter that the legacy of the revived Roman law and of its canonistic counterpart was a somewhat ambivalent or even bipolar one. In effect, it could either fuel claims for the possession of a sovereign authority unconstrained by law or could serve to energize the arguments of those who wished to vindicate against royal or papal claims the existence of limits on the power of rulers grounded in customary law or tradition, or the rights seen to be inherent in the community of the realm, or the community of the faithful. Thus, on the one hand, by fostering the notion that king and pope were the sole wielders of sovereign power in their respective communities, and by putting into circulation from the public law that dealt with the interests of the commonwealth the notion that in cases of necessity the public welfare (*status regni*, *status ecclesiae*) trumped the private rights of individuals or corporations, the civilians and canonists alike helped strengthen kings and popes in their dealings with their subjects.<sup>47</sup> On the other hand, coping as they had to in the twelfth and thirteenth centuries with a mounting tide of litigation involving monastic or cathedral chapters, collegiate churches, and other ecclesiastical corporations, the canonists were led necessarily to grapple with the means whereby such corporate bodies could have their say in court. Similarly, given the increasing financial pressures ecclesiastical superiors were being led to impose on those corporate bodies, some way had to be found to afford the latter a measure of “due process.” In their effort to solve such problems, the canonists were led to explain “the collegial structure of the church in terms of the Roman law of corporations” just as they had previously explained “the doctrine of papal leadership [of the church] in terms of the

Roman law of sovereignty.”<sup>48</sup>

A corporation (*universitas*) is an association that the law recognizes as being constituted by one or more persons, as possessing various rights and duties, and as being capable of acting as a single (if fictive) person in matters legal. Corporate bodies of one sort or another had proliferated in the Roman world, and the Romans had developed a sophisticated body of law to regulate their activities. While the Roman lawyers of antiquity had deployed the maxim *Quod omnes tangit ab omnibus a pprobetur* (What touches all by all should be approved), destined in the Middle Ages to become a legal-political cliché, they had not deployed it in relation to corporations as such. Instead, they had evoked it in relation to rather recondite technical issues pertaining to the practice of co-tutorship, that is, administration by co-guardians with a shared interest in something.<sup>49</sup> Moreover, the doctrine of agency they had developed to make legally possible the delegation by a principal (whether individual or group) to an agent charged with representing that principal in negotiations with a third party was somewhat defective. All that delegation did was to establish an obligation between the third party and the agent, not directly between the third party and the *principal*. In the late twelfth century, however, the canonists began to apply the *quod omnes tangit* principle directly to legally constituted corporations and to perfect the doctrine of agency in such a way that a corporation acting as principal, and by decision of the greater (or “greater and wiser”) part of its members,<sup>50</sup> could delegate to a proctor or attorney whom they needed to represent them in court what we today would call “powers of attorney.” That is to say, power sufficient to be able to see through to a definite conclusion the business at hand and in such a way that the corporate body concerned (the principal) would be obligated to honor the actions which its legal representative had taken on its behalf.<sup>51</sup>

Having thus amended such technical, procedural elements relating to corporation law, when it came to coping with the increasing amount of litigation involving localized ecclesiastical corporate bodies of one sort or another, the canonists did little more than rely on the legal procedures they had already put in place. In so doing, they were still, of course, operating within the realm of private law. In constitutional terms, however, the great, creative turning point came later on when those same canonists were moved to take a further, less obvious step. They did so when they chose to treat the universal church and, indeed, the general council representing it as corporate entities “in a very technical sense.”<sup>52</sup> They were led, as a result, to extend the now-established mechanism of representation by explicit legal delegation from the restricted realm of private law to the broader public constitutional sphere. By so doing they were able to fashion viable mechanisms whereby such corporate bodies as cathedral chapters or monastic orders could be summoned to send to provincial or general councils of the church proctors or representatives possessed of legally delegated authority to give their advice and consent to policy changes or taxation initiatives that touched the interests



of their “constituents.” Thus Pope Innocent III, who in 1200 and 1207 had summoned to Rome to meet with his curia representatives (*procuratores*) with full power (*plena potestas*) from the communes of the Marches, in 1215 took a further step and summoned from every part of the universal church proctors possessed of *plena potestas* to represent convents and cathedral chapters at the Fourth Lateran Council, one of the most important general councils ever assembled in the history of the medieval Latin church. Not long afterward practices of a similar sort made their appearance in the secular monarchies of western Europe, with the “community of the realm” being envisaged as a great corporation united in the pursuit of common ends<sup>53</sup> and capable of representation by delegates (*syndics, procurators, nuntii*). These the rulers summoned from the towns, communes, and (in England) shires for the purpose of seeking their counsel, support, and agreement in connection with the arduous governmental tasks and financial burdens confronting them and the policies to which they were committed. Though somewhat less clear gestures in a comparable direction had previously been made both in the empire itself and elsewhere, the emperor Frederick II appears to have been the first secular ruler to have taken the crucial step of summoning proctors who, as plenipotentiaries, were to be equipped explicitly with full powers. As the century wore on, however, that practice not only continued in the Papal States and the kingdom of Sicily but also came to be established in France, Spain, and England. In England, indeed, and from 1268 onward, the Romano-canonical formula used to define the proctorial mandate was incorporated in the writs of summons for attendance at Parliament sent to the knights of the shire. As a result, and by the beginning of the next century, “the kings of England and France, following the precedent established by the lawyers and by cathedral chapters in provincial councils, began to express the Roman principle of due process in court, *quod omnes tangit*, etc., as an integral part of the *rationale* of the representation of individual and corporate rights before the king and his court and council in assembly.”<sup>54</sup>

During the course of the two centuries ensuing, as we shall see in the third and final volume of this series, and as representative assemblies of one sort or another (provincial as well as national) made their appearance all over western Europe, national monarchs and territorial princes became accustomed to making use of these Romano-canonical procedures. They did so because they needed to secure for their increasingly vigorous and ambitious governmental activities, and for the mounting “extraordinary” taxation needed to finance them, the requisite consent not only of the noblemen and bishops who could attend their assemblies as individuals but also of the increasingly powerful corporate (or quasi-corporate) bodies and groupings which could not.

Here, Tierney has said, “the history of phrases like *plena potestas* and *quod omnes tangit* provides a good example of the interplay between secular and ecclesiastical ideas of government that characterized medieval thought and

practice.” The process that occurred, he adds, tended to conform to a typical pattern, that is, “the assimilation of a text of Roman private law into church law, its adaptation and transmutation there to a principle of constitutional law, and then reabsorption into the sphere of secular government in its new form.”<sup>55</sup> By their imaginative extension of such principles and procedures from the realm of private law into public, moreover, the canonists clearly took a creative step that it had simply not occurred to their classical Roman predecessors to take. By taking that crucial step, they made possible the eliciting of the consent of the governed not only in cities or in small corporate bodies but also in large territorial and national political communities and even in the international body of the universal church itself. That much is clear. What is less clear, however, and, accordingly, calls urgently for clarification is the precise *nature* of the consent thus elicited. On the one hand, we have to ask what its consequences were for the ruler—pope, king, prince—who sought it. On the other, what did it mean for the “constituents” or corporate bodies on whose behalf the delegated representatives were acting.

It is at this point that one can see coming together, and in tight configuration, the three deliverances of Romano-canonical law on which we have focused *seriatim*: first, the *quod omnes tangit* principle; second, the appeal to the *status regni*, *status ecclesiae*, and necessity of state; third, the insistence that, in instructing their representatives, the “constituents” choosing to send them should not constrain them with limited mandates but instead equip them with *plena et sufficiens potestas*, full powers adequate to the task of seeing the business at hand through to a definitive conclusion. And to the understanding of the issues involved, the contributions of the American historian Gaines Post (so oddly ignored in Walter Ullmann’s voluminous writings on medieval political thought)<sup>56</sup> are absolutely central.

Just as the *quod omnes tangit* principle had been embedded in the technicalities of Roman private law prior to its being applied by the canonists to corporate bodies and transferred thence into the political/constitutional realm, so too, it turns out, had the term *plena potestas*.<sup>57</sup> In the private law, the grant of *plena potestas* to a proctor representing a party in a legal proceeding had meant that that proctor was now possessed of powers sufficient to see the matter in contention through to a conclusion that would be legally binding on the party or principal who had given him that mandate. When in the early thirteenth century the canonists extended that principle into the political or quasi-constitutional realm, its appeal was obvious. When conferred upon representatives involved in negotiations among equals—as, for instance, among rival princes—the representatives accorded full powers could function as ambassadors—plenipotentiary capable of seeing the negotiation through to an agreed conclusion that would bind their respective principals. When *plena potestas* was conferred, however, upon the representatives of towns, shires, cathedral chapters, or other corporate entities who were being summoned by a ruler to meet in assembly with the object of

concurring in and (perhaps also) funding that ruler's policies, the relationship not being one between equals the outcome was a good deal more one-sided. It might well be in the interest of the "constituents" to confer upon such representatives no more than limited mandates. If that were the case, the latter would have to withhold consent to any demands of king or pope that went beyond their mandate, and by so doing delaying any action on the matter at hand while they referred back to their constituents for further instructions. But to concede such an arrangement would certainly not have been in the interest of the ruler involved. As a result, strong rulers at least, appealing to the *status regni* (or *status ecclesiae*)—in effect to "necessity of state" or the public welfare or well-being—were prone to insisting that the community should equip the representatives being summoned with "full and sufficient powers" (*plena et sufficiens potestas*) to consent to what was being proposed, and especially so if taxation were involved.

The appeal to necessity, it will be recalled, was understood to trump the private rights of individuals or corporations. That being so, it has to be asked, then, what exactly the "consent" thus elicited could actually have meant. And what seems clear, by way of response to that question, is that in the thirteenth century at least (though this was later to change) it was certainly not the type of consent that can truly be called "political," still less "democratic"—the type of consent that expresses the sovereign will of the people and implies some sort of limit on the reach of the ruler's prerogative.<sup>58</sup> True instead to its roots in private law and the specificities of legal due process, and especially so at the outset, that form of consent remained very much consultative and procedural in nature, with the case being made for the necessity of the proposed action being discussed and, as it were, "tried" in the assembly. What was involved was in many ways akin, if you wish, to the process that occurs today when the state, in preparation for example for the construction of a highway, exercises its legal right to take by eminent domain pieces of property that lie athwart the proposed highway corridor. In d'Entrèves's terminology, that is, the moves involved pertained to *legality* rather than legitimacy, to power rather than authority. Thus behind the use of the Romano-canonical maxim *Quod omnes tangit ab omnibus approbetur*, cited so frequently in writs of summons to medieval representative assemblies, lay an essentially traditional commitment. Namely, the commitment to the view that "all whose rights were touched by an issue should have every opportunity to prepare the defense of their rights, to take advantage of all means within the law and to consent to the court's decision on the legality of the rights only after a full defense... and discussion and debate (*tractare*) had taken place." The consent to that decision itself, however, was in effect compulsory. Similarly, behind the persistent efforts by rulers to insist that delegated representatives to a parliamentary-style assembly should come not with limited mandates from the constituents whose rights were being touched but with *plena et sufficiens potestas* lay the long-standing need of the courts to

ensure that the agent or attorney had the requisite power to conclude the business at hand in such a way that his conclusion would enjoy the legally binding concurrence of his principal. As Gaines Post put it in relation to parliamentary assemblies, “*Plena potestas*... was to an assembly what it was to a court, it was in theory an expression of consent, given before the action, to the decision of the court and council of the king.”<sup>59</sup>

Given the growing prevalence of representative assemblies, however, the accumulation across time of experience on the part of representatives, and the fluctuations in strength between rulers and the communities from which they were demanding consent, it is readily comprehensible that by the end of the fourteenth century representative procedures should have come to function less exclusively in the interest of the ruler. They had come to involve, indeed, attempts to control not simply the granting of taxes but also the way in which such taxes were to be expended, as well as efforts to interfere in the choice of those who were to function as ministers or advisers to the ruler. The challenge to papal prerogatives handed down by the Councils of Pisa (1409), Constance (1414–18), Pavia-Siena (1423–24), and Basel (1431–49) is only the most dramatic manifestation of the ways in which consent of a procedural-consultative nature could deepen into consent that was genuinely political and sovereign. At one time or another in the later Middle Ages most representative assemblies were able to make their weight felt in a whole range of governmental activities, notably in the legislative process. And the English parliament, old insular claims to the contrary, was far from being alone in using the power of the purse, its control of taxation, in order to enhance its legislative authority and to limit the ruler’s freedom of action. By the fifteenth century, indeed, the *cortes* of Aragon had become notably successful in its efforts to do precisely that.<sup>60</sup>

Against this background it is readily comprehensible, too, that as time went on theories of consent pertaining now, in the terms used by d’Entrèves, to legitimacy rather than simple legality, to authority rather than power, should begin to surface, and with mounting frequency, in the writings of theologians, lawyers, publicists, and political thinkers, prominent and obscure alike. But such developments lie beyond the chronological reach of the present volume. If, so far as the thirteenth century is concerned, one succumbs at all to thinking in terms of self-government, one would do well to realize that it was, in one historian’s happy formulation, “self-government at the king’s command.” Kingship, after all, remained the dominant political institution of the day, and while by its exploitation of representative institutions it had set in motion developments that were eventually to limit the reach of its powers, it continued to cling to those older (if by now contested) claims to the special sacral status which had for millennia served to legitimate its authority. And we should not permit the continuing presence at one level or another in the thirteenth-century political consciousness of that more archaic stratum of sentiment to escape our scrutiny.

## 7. Priestly Kings and Royal Popes

### *The Resilience of Royal Sacrality*

OF THE THREE MOST celebrated compilations of national laws and customary law to survive from the thirteenth century—the other two are Eike von Repgoure's *Sachsenspiegel* (ca. 1230) and Philippe de Beaumanoir's *Coutumes de Beauvaisis* (ca. 1283)—it is the *De legibus et consuetudinibus Angliae* (1230–60), traditionally attributed to the English royal justice Henry de Bracton (d. 1286),<sup>1</sup> that really stands out. It does so in part because it is the most analytic in its approach to law. But it does so, too, because it went further than its German and French counterparts in probing the question of the king's status and his relation to the law. Those probings, alas, and an oceanic body of subsequent scholarly commentary notwithstanding, were not to much avail.<sup>2</sup> Part of the reason for that lies in the problematic status of the Bractonian text itself. Errors and omissions have been generated by problems associated with the manuscript tradition itself, exacerbated by the existence of successive recensions of the text. But part lies also in the contents of the work, which reflect Bracton's uneasy attempts to harmonize his native materials with principles adopted (perhaps a little too casually) from Roman law. As a result, what Bracton has to say on the topic of kingship and its relation to the law has confronted scholarly commentators with uncommonly difficult problems of interpretation. Those problems continue, indeed, to preclude any altogether confident resolution of the old conundrum of whether Bracton is to be viewed as a "constitutionalist" or some sort of "absolutist." Perhaps the most judicious appraisal is the appropriately cautious one advanced by Tierney to the effect that while Bracton was probably "a constitutionalist by temperament," he was also "one who was working with intractable materials." Bracton's work, he adds, "was essentially an attempt to fit a massive structure of English private law into a rather flimsy framework of Romanesque public law and naturally there are signs of strain. The figure of a king, half feudal lord, half divine ruler, that he found in his plea rolls could not easily have been transformed into the first magistrate of a constitutional government even if Bracton had had any such conscious intention."<sup>3</sup>

We cannot enter here into all the intricate arguments and stubborn disagreements that encompass this central conundrum in Bractonian studies. Instead we must limit ourselves to the picture of the king as "half divine ruler" which emerges unambiguously when Bracton addresses himself to the matter of kingship. The king, he affirms repeatedly, is "the minister and vicar of God," distinguishing "*jus* from *injuria*, equity from iniquity."<sup>4</sup> And insofar as the power of the king, who "has no equal within his realm" and is "below no one, save only God," can be limited by law, it is precisely because "his power

is that of *jus* [right] not *injuria* [unright].” As “vicar and minister of God on earth,” his power “only is from God.” “As long as he does justice he is the vicar of the Eternal King”; should he deviate into injustice, however, he becomes “the devil’s minister.”<sup>5</sup> Hence, as “vicar of God” there is a sense in which he “ought to be under the law.” And this “appears clearly,” Bracton adds in an intriguing passage, “in the analogy of Jesus Christ, whose vicegerent on earth he is, for although many ways were open to Him for his ineffable redemption of the human race, the true mercy of God chose this most powerful way to destroy the devil’s work, he would use not the power of force but the reason of justice. Thus he willed himself to be under the law that he might redeem those who live under it. For He did not wish to use force but judgment.”<sup>6</sup> In the effort to avoid being drawn into injustice, then, let the king “put on the bridle of temperance and the reins of moderation.” And though “he must surpass in power all those subjected to him,” let his “heart... be in the hand of God.”<sup>7</sup> Whatever the complications generated by affiliated or intersecting lines of argument, on the matter at least of the elevated status of kings Bracton speaks with a measure of clarity. He does so also with a degree of insistence sufficient to draw to our attention the surprising resilience even in the face of clerical hostility of the old tradition of sacred kingship. It is all the more worthy of comment given the fact that at the time Bracton was writing almost two centuries had elapsed since the Gregorian reformers had trumpeted the ending of the era of priest-kings and pontiff-emperors, moving at the same time to draw a sharp line between clergy and laity and to align the realm of the sacred with the former and the merely secular with the latter.

That great ideological onslaught had certainly succeeded in sowing seeds of doubt about the sacral status and priestly pretensions of kings. It had done so at least to the extent that such beliefs were henceforth to be dogged by clerical skepticism and to be deprived (among intellectuals at least, if not necessarily among ordinary folk) of the aura of untroubled conviction to which they had long been able to lay claim. But as Bracton’s words may serve to remind us, those beliefs were so hallowed by time and so deeply rooted in the European consciousness as to stubbornly defy any clerical attempt at peremptory eradication. Until the latter years of the thirteenth century, at least, signs of that resilience were not lacking even in the German empire, which had had to bear the full brunt of the Gregorian ideological onslaught. They were, if anything, more clearly evident in France and England, whose rulers were by now well-established hereditary monarchs of discrete national territories and whose royal forebears had not been the primary target of the Gregorian offensive. And, by one of those great ironies that punctuate the history of ideas, such signs were coming to be manifested most clearly of all in connection with the papal monarchy itself, whose papal incumbents had evolved, as we have already gathered from the witness of James of Viterbo,<sup>8</sup> into full-fledged sacral kings, the most credible claimants, indeed, to the legacy of the *sacrum imperium* that had once been Rome’s. Though it ran

counter to many of the trends that were now becoming dominant in the political thinking of the era, the sheer resilience evinced by older notions of regal sacrality should not be permitted altogether to escape our attention.

## Imperial Sacrality and Its Fate

While the Gregorian attack on the time-hallowed sacral pretensions of the German emperors certainly succeeded in sowing stubborn seeds of doubt that were destined eventually to germinate in the blunt rejection of such claims, that process of germination proved to be both gradual and uneven in nature. The Gregorian propagandists had argued in the late eleventh century that the emperor derived his power most immediately from the people to whom he was bound by a species of contract. Nor had they hesitated to liken the position of a tyrannous king to that of the swineherd who, failing to perform his duties, had betrayed his trust and was liable, therefore, to outright dismissal.<sup>9</sup> Nevertheless, after a period of initial disarray and after the dust of strife had begun finally to settle, the old emphasis on imperial sacrality—extending sporadically even to the quasi-priestly status of the emperor—began once more to make its presence felt. It did so, admittedly, in somewhat attenuated form and in the teeth of persistent clerical efforts in the thirteenth century to deny sacramental status to the ceremony of royal anointing.<sup>10</sup> But it is perhaps revealing that, as late as 1318, Pope John XXII clearly felt the need to reaffirm that exclusion, insisting that royal anointing was not a sacrament and “left no mark on the soul.”<sup>11</sup>

Whatever the case, as distinguished a canonist as Rufinus of Bologna could still entertain around 1158 the notion that the emperor, “having been consecrated by holy unction, is not altogether a layman.”<sup>12</sup> Six years earlier, the emperor Frederick I, declaring that he held the imperial office “from God alone through the election of the princes,” and seated in the great church at Aachen on the throne of the (soon to be canonized) Charlemagne, had been crowned by the archbishop of Mainz and “sacramentally anointed according to the ordinance of the New and Old Testament.” The words are those of Otto of Freising (ca. 1115–58), uncle of the emperor, who goes on to insist that Frederick, no less than the bishop-elect of Münster who was consecrated the following day in the same church, was rightly to be called “the anointed of Christ the Lord.”<sup>13</sup> This in some measure aligns with Otto’s characterization of the empire (in his *Chronicle*) as being now in the Christian era “almost divine” (*pene divum*), conjoined in “one composite body that is the Church,” and as playing a role, therefore, in God’s providential salvific design.<sup>14</sup>

We know it to be the case that the later emperor Charles IV (1346–78) served as lector and read one of the lessons at the Christmas midnight Mass. So, too, did his son Sigismund, in his case in the presence of the prelates assembled in 1414 at the Council of Constance. We know also that Charles V (the last emperor to be anointed), robed in dalmatic, served as deacon at the



pontifical mass which Pope Clement VII celebrated in 1530 on the occasion of the imperial coronation. But it is hard to know quite what to make of such liturgical remnants testifying to the lingering memories of age-old imperial sacrality.<sup>15</sup> The more so in that the clerical establishment, while not launching any frontal attack on the ceremony of imperial unction, contrived, nevertheless, via changes made (under Pope Innocent III) in the *ordo* or the ceremony of anointment, to chip away at its significance and to minimize any sacrality attaching to the emperor's person. By the twelfth century, the words "and here the lord pope makes the emperor-elect into a cleric"—included since the tenth century in the liturgy for the imperial consecration—had quietly been dropped.<sup>16</sup> And in the version of that coronation *ordo* first used in 1208 when the emperor Otto IV was consecrated, and retained with no more than minor changes until its final deployment in 1530 when the emperor Charles V was anointed, it was stipulated that the emperor-elect was no longer to be anointed on the head, as were bishops, but on the arms, shoulders, or hands. The ceremony itself was moved from the high altar to what Gervase of Tilbury referred to as "a modest altar, on the right side of the basilica of St. Peter."<sup>17</sup> From the imperial acclamations, moreover, the hallowed words "crowned by God" (*a deo coronato*) were quietly omitted, thereby suggesting that "the Pope alone [not God] was the source of the Emperor's authority and [that] the anointing and crowning were acts of constituent value."<sup>18</sup>

If after the beginning of the thirteenth century, a species of sacrality still attached to emperors (and it did), it had now begun to lose its Christocentric-liturgical resonance.<sup>19</sup> Instead, and reflecting in this not only the impact of the clerical critique but also the revived study of the Roman law, it had begun also to take on a thinner, legally inspired coloration. While the emperor was no longer called "Vicar of Christ" (the venerable title that the pope was on the way to monopolizing for himself), he was sometimes referred to in essentially pagan fashion and under the influence of the ancient Roman legal vocabulary as "god on earth" or "terrestrial god" and the empire itself designated as the *sacrum imperium*. Frederick I (Barbarossa, 1152–90) had inserted into the *Corpus Juris Civilis* the decrees emanating from the diet he had held in 1158 at Roncaglia. And he did not hesitate to entitle himself as *dominus mundi* (lord of the world) or to proclaim himself to be "following the example of such divine predecessors [*divi*] as Constantine, Justinian and Theodosius." Nor were imperial supporters at all reluctant to characterize the emperor in the ancient fashion as a *lex animata* (living law) or to portray him as something of a mediatorial figure, a "priest of justice," the very "Idea of Justice," or even the "Father and Son of Justice"—as Frederick II (1194–1250) was described in the *Liber Augustalis* (1231), the collected constitutions of his Sicilian kingdom. The latter's court, indeed, was sometimes referred to as "the imperial church," and in his person, certainly, the emperor came for a while to be the focus of quasi-messianic hopes. His subjects and supporters, that is to say, began to see in him a new Augustus, a new "Savior" (the "wonderful

restorer” as the chronicler Matthew Paris called him), a mysterious figure destined by Providence to renew the world and “inaugurate the Golden Age.”<sup>20</sup>

Even after the fall of the Hohenstaufen dynasty and the great imperial interregnum that ensued, Dante, who at the start of the next century had in the *Divine Comedy* consigned Frederick II to hell, was not himself altogether immune to the providentialist thinking about the empire or the species of imperial messianism that had earlier been prevalent among Frederick II’s contemporaries. He noted in truly Hellenistic and early Christian fashion the parallelism between monotheism and monarchy, and he echoed the ancient tradition stemming from Luke and given such prominence by Eusebius of Caesarea according to which the coincidence of Christ’s incarnation with the Augustan peace was to be understood as nothing less than the disposition of divine providence.<sup>21</sup> And in the *De monarchia* he went on to insist that it was God himself who was the immediate source of the emperor’s authority. God alone chooses rulers, and the imperial electors, accordingly, “should not be given this name; rather they should be thought of as proclaimers of divine providence.”<sup>22</sup> In the midst of the euphoria which in 1311 was to greet the descent of the emperor Henry VII (d. 1313) into Italy, and which, in retrospect, is so hard to comprehend, Dante was moved to entitle him as “King of the earth, and minister of God” or “by Divine Providence King of the Romans and ever Augustus” and, going even further, to depict him in unmistakably messianic guise. “Then my spirit,” he testified, “rejoiced within me when I said secretly within myself: ‘Behold the Lamb of God, which taketh away the sins of the world.’”<sup>23</sup> In modern terms, of course, these are extraordinary and extravagant sentiments, but they do serve at least to give some credibility to the claim of Ernst Kantorowicz to the effect that it was “through the high pretensions of Roman legal philosophy” that, even in the wake of the Investiture Contest, the prince was able to regain a remnant of “his priestly character.” And, beyond that even, that the thirteenth century was to witness the “hallowing” or “sanctification of the secular state and its institutions” running parallel to the growing “imperialization of the papacy.”<sup>24</sup> In comparison with that imperialization, however, the “hallowing” he has in mind was somewhat tenuous and theoretical in character. And it was no less tenuous when compared with the raw and essentially untheorized aura of sacrality that clung so tenaciously to the French and English kings in the twelfth and thirteenth centuries and which was destined, if anything, to strengthen its grip on the popular imagination during the later medieval centuries.

## **The Sacral Aura of Kingship in France and England**

So far as the Gregorian onslaught on the ancient tradition of “pontifical kingship” went, the French and English kings, unlike their unhappy German

counterparts, were fortunate enough to have stood on the sidelines. They escaped, as a result, the full brunt of that Gregorian attempt to destroy, once and for all, the very foundations of the traditional claim to the sacrality of kings. Moments of “church-state” tension they undoubtedly experienced—that, for example, between Henry II of England (1154–89) and his stubborn archbishop and erstwhile friend Thomas à Becket of Canterbury. Or later on, that between King John (1199–1216) and Pope Innocent III. But the papal attempt to tinker with the nature of the royal anointing ceremony and to diminish its significance met with less success in England—or, for that matter, France—than it had in Germany. In an attempt, as we have seen, to distinguish royal from episcopal power by discriminating between the forms of anointing used in each case, Innocent III had decreed that whereas bishops were to be anointed on the head with chrism (a special oil mixed with balm), kings were henceforth to be anointed only on the arm and shoulder and the less noble “oil of the catechumens” used. A small difference it might seem, but it appears to have been intended to suggest that if royal unction were to be assimilated to any other “sacrament,” it should be to baptism rather than episcopal consecration.<sup>25</sup> Neither in France nor in England, however, did this reform fully take hold. On through the thirteenth century, the practice of anointing kings on the head was retained in those proud national kingdoms and the use of chrism either retained or (in the fourteenth century) reintroduced.<sup>26</sup> At the ceremonial or liturgical level at least, the story was largely one of continuity with the pre-Gregorian past. Indeed, the liturgy followed as recently as 1953 when Elizabeth II of England was anointed and crowned in Westminster Abbey corresponded closely (despite some subsequent accretions) with the oldest of the coronation rites for Anglo-Saxon kings of which we have a complete record, namely, the Edgar *ordo* of 973. And it was from that *ordo*, as we have seen, that the Anglo-Norman Anonymous in the late eleventh century had drawn so much of the inspiration for his depiction of the monarch as a sort of “national Melchisedech,” priest as well as king.<sup>27</sup>

A similar fate attended clerical attempts to consign to oblivion the widespread belief in the power of the kings of France and England by their very touch to cure scrofula (known accordingly as *le mal de roi* [the king’s evil]).<sup>28</sup> The practice of touching for the king’s evil appears to have been initiated in France in the early eleventh century prior to the Gregorian upheaval and in England in the early twelfth century. Its inauguration in the latter case, admittedly, was sometimes attributed to the saintly eleventh-century Anglo-Saxon king Edward the Confessor (1042–66). That notwithstanding, it seems clear that it may not have become a matter of regular practice in England until the thirteenth century.<sup>29</sup>

While the Gregorian reformers launched no frontal attack on this quasi-magical practice (which some sought to Christianize by seeing it as an effect of royal unction), they and their clerical successors clearly hoped by the

maintenance of a resolute silence to condemn it to oblivion. “To have admitted,” after all, “that a lay prince was capable as such of accomplishing supernatural cures would have been, willy-nilly, to strengthen in men’s minds the very notion of sacred royalty they were so zealously attempting to destroy.”<sup>30</sup> “For almost two centuries in France,” Marc Bloch noted, “all the ecclesiastical literature—that is, for this period, all historical and didactic literature—observed an almost unanimous silence on the subject of the healing rite. It was the same in England, and for an even longer period.”<sup>31</sup>

Protracted clerical disregard, however, appears to have had little or no effect either on official royal practice or on the deeply rooted popular convictions that helped sustain it. While no precise figures survive to testify to the frequency with which the French kings exercised their curative powers, we are somewhat better informed concerning English royal practice. There, during the period running from 1272 to 1377, Edward I, Edward II, and Edward III were accustomed to bestowing a small coin on those whom they sought by their touch to cure. And that practice left precious numerical traces on the royal household accounts. Thus we know, for example, that Edward I (1272–1307) exercised his curative powers with a fluctuating frequency ranging from a minimum of about two hundred times a year to a maximum of almost eighteen hundred—this last meaning that during the year in question he touched for the king’s evil somewhere in the neighborhood, on average, of five times a day.<sup>32</sup> And in England, from the time of Edward II (1307–27) onward, to the royal practice of touching to cure scrofula was added the practice of distributing so-called cramp rings (*anuli medicinales*, as they were called in the royal household accounts) to the wearing of which was credited the curing of muscular spasms or epileptic seizures.<sup>33</sup>

Such curious practices and the rich array of related “rituals of power” which Sergio Bertelli has depicted as belonging to a *religio regis* (cult of the king)<sup>34</sup> that endured in Europe down into the seventeenth- and eighteenth-century era of the execution of kings may well seem to stand at a certain remove from the history of political thought as we normally conceive of it. But the survival of such practices in the teeth of clerical disapproval on through the twelfth and thirteenth centuries and down into the late medieval and early modern centuries would surely have been inconceivable without the tenacious persistence of something else that had been deeply embedded in the theopolitical thinking of the earlier medieval centuries. That “something else” was the almost instinctive belief in the sacrality of kingship. In the national kingdoms, at least, that was a belief that was not only to endure but also to pick up a measure of added strength in the later Middle Ages.<sup>35</sup> Whatever clerics or intellectuals came to think about the matter, the efforts of the Gregorians and their clerical successors to convince the mass of ordinary faithful that kings were simple lay folk met with surprisingly little success.<sup>36</sup> There is every reason to believe, indeed, that among later medieval people, at least, the moving speech that Shakespeare was later to put in the mouth of

Richard II would have generated an unquestionably sympathetic resonance:

Not all the water in the rough rude sea  
Can wash the balm from an anointed king;  
The breath of worldly men cannot depose  
The deputy elected by the Lord. (*Richard II*, act 3, scene 2)

## The Pope as Sacral King

The Gregorian attack on pontifical kingship notwithstanding, the sheer resilience which notions of royal sacrality exhibited in the two leading national kingdoms testifies powerfully to their continuing embedment in the consciousness of the medieval populace. But the thoroughness with which such ideas succeeded in colonizing even ecclesiological discourse testifies still more eloquently to the continuing purchase of royal sacrality on the European imagination. We have already seen that for a James of Viterbo, writing at the start of the fourteenth century, the universal church was itself a kingdom and the pope nothing less than an earthly king. But the complete and far-reaching fashion in which he was able to elaborate and explore the implications of that way of thinking would have been inconceivable had it not represented the culmination of more than two centuries of complex ecclesiological development. Among other things, that process of development had eventuated in two new departures, our retrospective familiarity with which could easily betray us into taking them (quite improperly) utterly for granted. The first was the very fact that the papal office was now being understood quite unambiguously as in its very essence monarchical. It was, in effect, now seen as a sacred monarchy akin to, if greater than, the essentially sacred temporal European kingships of the earlier medieval centuries. The second departure was the canonistic elaboration of “a sophisticated theory of kingship.”<sup>37</sup> Both departures were, in fact, novelties of the High Middle Ages, and though they were complexly interrelated, we would do well to try to tease them apart and address them sequentially.

We saw in the first volume of this series that the developmental process whereby the medieval papacy had risen to prominence had been a halting and uneven one, marked more often than not by the existence of an enormous gulf between the grandiose theoretical claims periodically advanced on its behalf and the sober realities of the limited powers that were characteristically at its disposal. It was a process punctuated also by periods of humiliating subordination to the ambitions of the local Roman aristocracy or to the intrusive power of the German emperors.<sup>38</sup> By the eleventh century, nevertheless, the ancient primacy of honor attaching to the popes as bishops of the old imperial capital, where the apostles Peter and Paul were both believed to have suffered martyrdom and of which Peter was firmly believed to have been the first bishop, had begun to modulate into a primacy that involved claims to jurisdictional or governmental authority over the various

provincial churches of the West. And it was via its energetic leadership in the mid-eleventh century of successful church-wide reform, as well as (from 1095 onward) its channeling of the martial energies of the western European nobility into the great crusading effort to recover and hold the Holy Land, that the papacy eventually rose to a position of hegemony. Despite the deployment of such spiritual titles as bishop, patriarch, pope, successor of St. Peter, Vicar of Christ, servant of the servants of God, that papal hegemony came to be understood as essentially *imperial* in nature. Its original nature notwithstanding, the papal office as it emerged in the High Middle Ages and has persisted down into our own era, no less in its inner reality than in its self-presentation, was destined to be an essentially monarchical one.

The great turning point in its development was, of course, the pontificate of Gregory VII (1073–85), but scattered intimations of its ultimately royal destiny can be detected in the centuries prior to the revolutionary departures of that pontificate. Prominent among them was the surfacing in the mid-eighth century of the document we know as the “Donation of Constantine” and which, via its eventual inclusion in Gratian’s *Decretum*, was to be readily available for exploitation by later papal propagandists. In that forged document, it will be recalled,<sup>39</sup> the emperor Constantine was represented as having endowed Pope Sylvester I (314–35) and his papal successors with the rulership of Rome, Italy, and the western provinces of the empire and as having transferred to him the use of the imperial regalia. As a result and, it seems, by deliberate intent, the donation depicted the pope as occupying a position equal in status to that of the emperor, as placed at “the centre of the concept of empire,” and as clothed “in the splendor which surrounded the earthly imperator.”<sup>40</sup> The document, accordingly, was later to lend itself to extensive use by the defenders of papal sovereignty in matters temporal. And that was to be especially the case after Innocent IV (1243–54) had reinterpreted it as describing not so much the *conferral* upon the popes of sovereign temporal power as the *restitution* to them of something that was properly theirs by age-old right—namely, the sovereignty in matters temporal that Christ himself had originally conferred upon his papal vicar.<sup>41</sup> Noting that “our Lord Jesus Christ, the son of God, was a true king and true priest after the order of Melchisedech just as he was true man and true God,” Innocent went on to argue that

he [Christ] established not only a pontifical but a royal monarchy in the apostolic see, committing to Peter and his successors control over both an earthly and a heavenly empire, which was adequately signified in the plurality of keys, so that the vicar of Christ might be known to have received the power of judging over the heavens in spiritual things through the one key that we have received, over the earth in temporal things through the other.<sup>42</sup>

It would be improper to dismiss as mere rhetoric the language used in this

statement. What it suggests is that while the Gregorian reformers and their successors had certainly intended to deprive of any sacred aura the kingship of the German emperors, they were not themselves totally unresponsive to the allure of sacral kingship itself. That ancient complex of notions cast a very long shadow across their own ambitions for supremacy in Christian society. Had it not done so, it would be hard to explain how the popes of the High Middle Ages permitted themselves to emerge as full-fledged sacred monarchs in their own right. Brooding about the ubiquity of sacral kingship and about the close parallel between royal and episcopal unction, the anthropologist A. M. Hocart was once moved to observe that “the king and priest are branches of the same stem.”<sup>43</sup> And it is certainly the case that over the course of the twelfth and thirteenth centuries the bishops of Rome moved authoritatively to the forefront as the true (or most convincing) successors to the erstwhile Roman emperors.

Thus they not only came to rule a highly politicized church via a centralized bureaucracy and in accordance with a law modeled on that of the Roman empire (the terminology of which the canonists used creatively to enhance papal authority), but they did so with a marked degree of imperial grandeur. They called themselves “true emperor” or “celestial emperor” and deployed the old pagan Roman republican and imperial priestly title of *pontifex maximus* (supreme pontiff). Like the emperors they claimed the prerogative of being a *lex animata* or “living law” and, at least from the time of Nicholas II (1058–61) onward, they were crowned in a ceremony “that was meant to signify by visible, easily comprehensible and familiar means the monarchic status of the pope.”<sup>44</sup> So far as regalia, costume, and ceremonial went, in the mid-eighth century the forged Donation of Constantine had taken pains to depict the bishop of Rome as entering into possession of the imperial regalia, of the red imperial cloak (or *cappa rubea*), with which popes eventually came to be “enmantled” at their investiture, and of the Byzantine *phrygium* or tall white hat, which was to evolve, on the one hand, into the mitre worn eventually by all bishops and, on the other, into the triple crown (or *Triregnum*) worn as a symbol of their sovereign power by all popes down into the 1960s.<sup>45</sup> If that eighth-century depiction was well ahead of the actual ceremonial realities of the day, the introduction in the mid-eleventh century of a coronation ceremony (eventually to include also a ceremonial enthronement followed by homage),<sup>46</sup> as well as the blunt stipulation in the *Dictatus papae* (1075) that the pope alone might “use the imperial regalia,”<sup>47</sup> launched a process that was to reach its culmination in the thirteenth century. For then it was that “all the symbols of empire were to become attached to the papacy,” and when Innocent III could assert that he wore the mitre as a sign of his pontifical position but the crown or tiara as a sign of his imperial power, and when popes like “Gregory IX (1222–41) and Boniface VIII (1294–1303)... [were] seen in every respect as successors of Constantine.”<sup>48</sup> By the time, then, that James of Viterbo came to write his *De regimine Christiano*, with its



identification of Christian society at large with the visible church and its depiction of this church as a kingdom with the pope as its earthly king, the ground had long since been prepared in visual representation, symbolism, and ceremony for the theopolitical vision he elaborated in so thoroughgoing a fashion. It had also been well prepared in more abstract theoretical terms. For it was the pope who was “the first European monarch for whom a sophisticated theory of kingship was developed, and the canonists of the twelfth and thirteenth centuries” were the ones “primarily responsible for shaping... [that] theoretical structure.”<sup>49</sup>

Striking and intricate though that great architectonic structure was to be, it harbored, nonetheless, faults and contradictions that had the effect of making it less than fully coherent. So far as matters constitutional were concerned, we have already seen that the legacy of the revived Roman law and of the canonistic counterpart that drew on it as model and inspiration was ambivalent, even “bipolar,” in nature. There was much, on the one hand, in the canon law and the vast body of commentary surrounding it to encourage a constitutionalist respect for the rights inherent in the community of the faithful, along with the concomitant sense that the power even of the papacy was ultimately a limited one. Thus one truly fundamental issue, conceded by Gratian in a crucial text in the *Decretum*, pivoted on the possibility that even a pope might lapse into heresy, be subject to judgment and deprivation. And that contrived to draw into sharp focus “the problem of reconciling a theory of legislative sovereignty with an ideal of limited government.”<sup>50</sup> On the other hand, there was also much in that developing body of law supportive of papal aspirations to an authority that was sovereign and unrestrained, at least, by human law. If the former, essentially constitutionalist, strand of thinking was to come to the fore in the fourteenth and fifteenth centuries (and will be a focus of attention in the third volume of this series), it was the latter, more absolutist, strand that may be said (with a measure of expository simplification) to have dominated ecclesiological discourse in the late twelfth and thirteenth centuries.<sup>51</sup> It is upon this latter strand, then, that our attention will be focused here.

In addressing that latter strand we would do well, in order to avoid confusion, to try to tease apart the arguments and theories of the day that spoke specifically to the internal constitution and governmental arrangements of the universal church conceived as a corporate, hierarchically ordered, and clerically dominated body presided over by its papal head and those (admittedly overlapping) theoretical formulations that spoke rather to the church conceived of now in broader and more inclusive fashion as Christendom itself, the international Christian society at large. In this latter society emperors and kings also played a governing role, and the precise nature of their relationship with the papal monarch continued across these centuries to be hotly disputed.

## The Imperial Papacy (i)

So far as the church went, conceived in the narrower sense as a corporate, clerically dominated body, much of the debate circled around the relation of monarchical pope both to the ecclesiastical laws and customs handed down from the past and to the corps of bishops, the roots of whose own rights were deeply engaged in that body of law and custom. And we can illustrate the development in the thirteenth century of the more “absolutist” strand of thinking concerning the reach of papal power by dwelling briefly on three matters. The first concerns the views of the prerogatives attaching to the papal office which Pope Innocent III (1198–1216) hammered out in the impressive body of decretals issued during the course of his pivotal pontificate. The second is the later elaboration of those views in a more sweeping and pointed direction which one may find in the commentaries of the great decretalist Hostiensis (Henry of Segusia, d. 1271). The third is the significance for subsequent thinking about the right ordering of the church and, therefore, for the history of political thought at large, of the heated controversy that broke out at the University of Paris in the 1250s between the secular and mendicant theologians.

The enormous body of decretal letters that Innocent III promulgated during the course of a wonderfully active and energetic pontificate leaves no room for doubt about the exalted nature of his understanding of the authority pertaining to the papal office. As the thirteenth century wore on, his view of the matter was to become the dominant one, so much so, indeed, that it has been said that “no other pope was as important for edging papal monarch toward absolutism.”<sup>52</sup> Though they came to be woven about some central threads, such views, and especially those concerning the pope-bishop relationship, were not the outcome of any exercise in theoretical abstraction. Instead they reflected positions arrived at during the discharge of day-to-day judicial and administrative responsibilities, and the fabric of thought into which they were woven was understandably a complex, variegated, nonsystematic, and highly nuanced one. Some aspects of his thinking about the papal office, indeed, are not as clear as one might wish. Others, however, are clear enough and not, I believe, in dispute. Prominent among the latter is Innocent’s central and in real measure novel emphasis on the “vicariate of Christ.”

The term “Vicar of Christ” (*vicarius Christi*) had had, of course, a long history and we have seen it applied in earlier centuries not only to bishops in general but also to the Christian emperors.<sup>53</sup> Innocent III, however, succeeded in monopolizing the title and securing its exclusive attachment to the pope himself. In so doing, he helped sponsor its close linkage in later writings with the papal fullness of power (*plenitudo potestatis*) and the notion that the pope was “the ordinary judge of all [the faithful]” to whom any *fidelis* could directly appeal (*papa est iudex ordinarius omnium*).<sup>54</sup> At the same time he

infused it with a new and specific meaning. He advanced the view that by virtue of being the Vicar of Christ, the latter's representative on earth, the pope himself had received from Christ "the extraordinary right" to exercise in certain cases nothing less than "divine authority on earth." Thus in the much glossed decretal *Quanto personam* Innocent suggested (or at least implied) that "the pope had two types of authority. In the ordinary exercise of his office, the pope did not rely on extraordinary prerogatives; his powers were those of any prince and were circumscribed by custom, law, and tradition. However, when he exercised the prerogative he shared with Christ, he could do much more."<sup>55</sup>

Upon this (incipient) distinction the decretalist Hostiensis, concerned as he was to emphasize the divine dimension of the papal authority, came to focus with marked intensity. In his effort to foreground and clarify what was involved, and in search of an appropriate and congruent analogy, it is revealing that he did not hesitate to appropriate from the discourse of contemporary theologians and for his own legal purposes a distinction that was destined to have a half-millennial history in the realms of sacramental theology and the theology of justification, as well as in that of epistemology, natural philosophy, and ethics. That move was a bold one, and we should not miss the fact that in making it Hostiensis was emphasizing still further the quasi-divine nature of the power the pope wielded in his capacity as Vicar of Christ. For the distinction in question concerned the power of God himself. The theologians had become accustomed to deploying it in an attempt to elucidate the implications for the realms of nature, grace, and morality of nothing other than the divine attribute of omnipotence. And that distinction was to linger on for centuries to inform the speculations and haunt the imaginations of theologians and philosophers of more than one stripe and to place itself at the disposal of scientific thinkers concerned with the *nature* of the natural order.

The trouble was, as many a twentieth-century philosopher working in the Anglo-American analytic tradition has ruefully discovered—thinkers ranging from Kenny to Keane, and from Mackie to Dummett, Plantinga, and Geach<sup>56</sup>—omnipotence can turn out to be something of an ungrateful notion to invoke. Among other things, it can invite unrestrained speculation about hypothetical divine action and generate a veritable cat's cradle of tangled philosophical conundrums concerning the relationship of God's power to his will and of both to his wisdom, goodness, and justice. As a result, in the twelfth century, Peter Lombard (ca. 1095–1160) had been led to devote a crucial and influential section of his great theological textbook, the *Liber sententiarum*,<sup>57</sup> to such intractable questions as whether God of his omnipotence could have made or arranged things other than he had, whether he could have created a world better than he did, or whether, even, he could undo the past—that is, so act that an actual historical event would not have occurred (this last akin to the specter that has beckoned unnervingly from the

dreams or nightmares of many a modern science fiction writer).<sup>58</sup>

It was in their efforts to grapple with such conundrums and, in effect, to “manage” the threat to intelligibility that the concept of omnipotence could all too easily pose, that medieval scholastic thinkers (using terminology that came to the fore in the early thirteenth century) were led to distinguish between God’s power considered as *absolute* and that same power considered as *ordained* (*potentia dei absoluta/ordinata*).<sup>59</sup> We now know, however, that they did so, and right (it seems) from the very start, in two different ways. They did so, first, by distinguishing, if you wish, between God’s capacity and volition,<sup>60</sup> between, that is, what God of his omnipotence *can* do, speaking hypothetically (*potentia absoluta*), and what he can do, taking now into account the orders of nature, morality, and grace he has *actually* willed or ordained to establish (*potentia ordinata*). Here the absolute power simply means God’s power *in abstracto*, his ability, that is, to do many things he does *not* in fact choose to do. The second usage, however, understood the absolute power not in hypothetical terms but in an “operationalized” or presently active sense (and especially so in relation to divine miraculous action), involving an ever-present potential for departing from or on extraordinary occasions running contrary to the order—natural, moral, salvational—currently established by virtue of his ordained power (*de potentia ordinata*).<sup>61</sup> Centuries later, Francisco Suárez (1548–1617) was to refer to this latter usage as “the more common” one. And appropriately enough, he sometimes used the term *potentia ordinaria* rather than *potentia ordinata* to denote God’s power as it operates “in accord with the common law and causes that he has established in the universe.” He clearly understood the absolute power, accordingly, less as a matter of abstract or hypothetical possibility than as an extraordinary power of miraculous interposition whereby God can indeed act *de facto* “aside from” or “beyond” the ordinary power.<sup>62</sup>

It was also to this latter theological usage that Hostiensis (who similarly on occasion substituted *potestas ordinaria* for the term *potestas ordinata*) turned in order, by invoking the divine analogy, to clarify Innocent III’s distinction.<sup>63</sup> It is important to dwell for a while on Hostiensis’s introduction of the distinction into legal discourse (a pretty recondite matter it might seem), not only because of the light it sheds on the degree to which the papacy was conceived of as a sacral monarchy but also because his version of the distinction was not to be confined to the canon law alone but was to work its way into the commentaries of later medieval civilians like Baldus de Ubaldis as well as into the arguments of the sixteenth- and seventeenth-century French and English lawyers concerning the nature and reach of the royal prerogative.<sup>64</sup>

In his use of the *potestas absoluta/potestas ordinata seu ordinaria* terminology, Hostiensis is not always clear or unambiguous. As a result, commentators have sometimes been tempted to portray him as wishing to

attribute to the pope a measure of arbitrary power.<sup>65</sup> On balance, however, that does not appear to have been his intention. If we align what he has to say with the distinction embedded in Innocent III's *Quanto personam*, he can be seen to have identified his papal *potestas absoluta* with the *plenitudo potestatis* and to have ascribed to the pope the ability in terms of that absolute power to act, for cause and in extraordinary situations, outside his normal jurisdictional competence and above the law to which, in terms of his ordained or ordinary power, he is bound. So far as the exercise of his ordained or ordinary power goes, the limits hemming it in are clear enough: established custom, the provisions of the (human) positive law, the mandates of divine and natural law, and what may be referred to as "the unwritten constitution" of the church. What the absolute power entailed for Hostiensis is somewhat less clear. Certainly, if seldom used, it entailed a power to abrogate positive law and, under extraordinary circumstances and by virtue of the measure of divine authority inherent in the papal vicariate of Christ, to dispense from the mandates of divine and natural law—thus, for example, dispensation from the laws of marriage or from monastic vows.<sup>66</sup> Somewhat less clearly, he seems to have understood the papal absolute power as involving a power that if exercised for due "cause," could even encroach upon the *status ecclesiae* or divinely established constitution of the church—as, for example, happened when the pope united two bishoprics or, in contravention of ancient customary norms, translated a bishop from one diocesan see to another.<sup>67</sup> In such cases, by deploying the notion of *potestas absoluta*, Hostiensis was in effect vindicating Innocent III's assertion that the pope, by virtue of his possessing the vicariate of Christ, had the "right to exercise the office of God on earth."<sup>68</sup>

Even if one were properly to concede that neither Hostiensis nor Innocent intended by all of this to imply that the pope was possessed of a power that was unlimited or arbitrary, it has proved easy enough to assume that Innocent, nonetheless, must necessarily have subscribed to the so-called "derivational" theory of ecclesiastical jurisdiction. In accordance with that theory the jurisdictional power wielded by lesser prelates (archbishops and bishops) in the clerical hierarchy was nothing other than a delegated power deriving from the papal monarch, possessed as he was of the *plenitudo potestatis* and serving as the very font and source of all jurisdictional power in the church."<sup>69</sup> Not all, however, would concur in that assumption, and Kenneth Pennington, certainly, has urged caution on the matter, arguing, among other things, that the text from Innocent's writings on which Schatz relies in attributing to him a commitment to the derivational theory is ambiguous, and that it was only in the latter part of the century that canonists and theologians came to discuss "ecclesiastical jurisdiction" in clear and unequivocal language.<sup>70</sup> And herein lies the broader significance of the bitter controversy that broke out at the University of Paris in the 1250s between the theologians who belonged to the secular clergy and those who, like Aquinas or Bonaventure (ca. 1217–74) belonged to the mendicant orders of Dominican or

Franciscan friars.

It was Innocent III who had extended official approbation to those two orders, and according to their members that papal approbation and the subsequent extension of various privileges meant that they could intrude into the normal parish life of Latin Christendom without having to seek permission from local bishops. Those privileges authorized them, in effect, to preach, teach, administer the sacraments, bury the dead, and collect any offerings normally attaching to such activities. In effect, the popes had used “their sovereign authority as heads of the church to set up a new pastoral structure alongside the old one.”<sup>71</sup> The overt strife that broke out in Paris around 1252 reflected, in general, a reaction on the part of the bishops and their supporters among the secular clergy against the growing centralization of power in the hands of the papal monarch that the grant of such privileges dramatized. After 1256, however, it came to focus in particular on more fundamental matters that were essentially constitutional in nature. It did so after a Franciscan friar, Thomas of York, bluntly claimed that the grant of papal privileges to the friars was no more than a particular manifestation of the fact that the pope was the source of all jurisdictional power in the church, including the power wielded by lesser prelates like bishops. That claim had the effect of undercutting the older, hallowed view that “the church’s constitution consisted of a collection of rights and duties, some established by Christ, others created by custom,”<sup>72</sup> and that each bishop wielded by divine right and concession a measure of autonomous authority grounded in the church’s fundamental law. As a result, and although it did not necessarily carry the day or sweep the ecclesiological field, the salience of the “derivational” theory of ecclesiastical jurisdiction did help focus the attention of later medieval theologians on the internal governmental structure of the church, a matter that was to prove to be of some significance for the subsequent development of secular political thinking.<sup>73</sup> And it led them also to shift “the discussion of the church’s constitution from inviolable rights to [the matter of] jurisdiction” and to clear “the way for a theory of absolute monarchy” which “eventually became the foundation of absolute monarchy in the modern church.”<sup>74</sup>

## **The Imperial Papacy (ii)**

The above-described way of thinking about the internal constitution of the church conceived as the hierarchically ordered clerical body had important consequences also for the way in which theologians and canonists came to conceive of the relationship between the papal monarch and those other rulers in the unitary Christian society that had come to be called Christendom and who had the titles of emperors and kings.<sup>75</sup> In the mid-twelfth century, using language that was to reverberate influentially down through the centuries, Hugh of St. Victor (d. 1141) had asserted that “the spiritual power excels the earthly or secular in honor and dignity in proportion as the spiritual life is

more worthy than the earthly, or the spirit than the body.”<sup>76</sup> Similarly, Bernard of Clairvaux (1090–1153) had described the pope as “the supreme king and priest” and, commenting on what was to become the celebrated reference to the “two swords” in Luke 22:38, had concluded that both of them “the spiritual and the material belong to the church, and that although the former is to be wielded by her own hand, the two are to be employed in her service.”<sup>77</sup> But if such language was to be widely influential and to be evoked frequently by later thinkers, it was also imprecise enough to be susceptible of quite varied interpretation. That, on the face of it, one might not expect to be the case with what the great, high papalist lawyer-popes of the following century—Innocent III and Innocent IV (1243–54)—had to say on the issue. But it has, in fact, proved to be the case and, or so I conclude, for two basic reasons. The first concerns the historians who from the nineteenth to the mid-twentieth centuries chose to concern themselves with the matter; the second with the substantive views expressed by those popes themselves. More precisely, the first reason concerns the interpretative lens through which historians sought in the past to understand those popes. The second concerns the complexity and fluctuating nature of what the latter themselves had to say when it came to the relationship between their own overarching monarchical power as Vicars of Christ and that wielded by the temporal rulers of Christendom, national as well as imperial, with whom they came periodically into conflict—as often as not on forthrightly political grounds. In both cases, the central issue is what has been made and what is to be made of the stance which Innocent III characteristically adopted.

By way of addressing this issue, I would begin by stressing the importance of not permitting any confusion or conflation of the two reasons alluded to above. So far as the historians go, down to the mid-twentieth century their predominant preoccupation seems to have been less with what Innocent III actually *claimed* for the papacy in the realm of temporal power than with matters pertaining to purpose and intentionality, in effect the goals they saw him to be pursuing in his dealings with secular rulers. According to the older view, updated more recently by Walter Ullmann, he, like Innocent IV after him, was gripped by a driving ambition to secure for the papacy the overriding universal leadership in matters temporal that others, like Aegidius Romanus and James of Viterbo, were later to attribute to it. “The goal,” as Hauck put it at the turn of the century, was “the vindication of papal rulership in both church and world.” The pope was “no longer primarily a priest, but above all a secular lord.”<sup>78</sup> If that point of view came to be challenged in midcentury by such scholars as Maccarrone and Fliche, the interpretative lens they used remained unchanged. Their focus, that is to say, was still on purpose and intention, but the contours of the landscape they glimpsed through that lens were rather different. These latter historians of revisionist bent were concerned above all to undermine the attribution to Innocent III of crassly political ambitions, to underline the fundamentally spiritual nature of his



goals, perhaps also to distance him from the posture of hegemonic worldly ambition that might more readily be conceded in the case of Innocent IV. As Maccarrone insisted, when Innocent III permitted himself to allude to “the ‘kingdom’ which the Church ruled, . . . every idea of temporal dominion is far removed from it.”<sup>79</sup> Since midcentury, it is true, the center of gravity of this particular debate has shifted somewhat in the direction of those who, like Fliche and Maccarrone, have sought to vindicate the ultimately spiritual nature of Innocent’s commitments. But the debate has still ended in something of a standoff between a Hauck or Haller, on the one hand, and a Maccarrone or S. Mochi Onory on the other.

That is not the case, however, with the second and more substantive discussion about what exactly it was that Innocent III and his papal successors were actually claiming for the reach of papal power in the realm of temporal affairs. There, and following now along the path marked out by the balanced, carefully nuanced, and broadly consistent analyses put forward by Watt and Tierney,<sup>80</sup> we must begin by recognizing three things. First, that when we approach the views of Innocent III, who was the author of the most significant papal pronouncements on the matter, we have to recognize the fact that he was working within the context of a canonistic tradition that was itself characterized by “a certain disharmony” or tension. “It was dualist whenever it was nearest to particular practical problems and to the lessons of Roman law. It was monist when it wished to emphasize the existence of a single Christian society under a single head.”<sup>81</sup> So far as Innocent III himself was concerned, when he intruded into the tangle of important temporal matters, he characteristically chose not to ground his actions on the claim that the vicariate of Christ, who was king and priest, conferred upon the pope an overriding or supreme power in matters temporal no less than spiritual. Instead, he framed his position on more limited and lawyerly grounds and, in this like Alexander III before him, tended to disclaim any wish to “usurp,” “diminish or disturb the jurisdiction and power” of secular rulers.<sup>82</sup> Those particular words are drawn from the decretal *Novit* of 1204 which Innocent issued in connection with an essentially feudal dispute between King John of England and his overlord Philip II, king of France. In that instance, while insisting on his right to intervene *ratione peccati*, on the spiritual grounds, that is, of sin, because Philip had broken a solemn oath and precipitated a war, Innocent was careful to concede that he was not presuming “to judge concerning a fief, judgment on which belongs to him [i.e., Philip].”<sup>83</sup>

A similar degree of deference to the jurisdiction and prerogatives of secular rulers is evident also in the decretals *Venerabilem* (1202—concerning the right of the pope to decide which of the claimants to the imperial office was to be deemed worthy of anointing as emperor), *Licet* (1206—stipulating that only in extraordinary circumstances would the pope take cognizance of appeals from secular courts), and even *Per venerabilem* (1202—concerning the right of the pope to exercise outside his own papal states powers that were

by definition those of a secular or temporal ruler). Though it should be conceded that to this last decretal he did choose to append a much less deferential and more sweeping statement about the reach of his papal prerogatives into the secular domain.<sup>84</sup> The basic attitude informing Innocent's stance in these decretals, however, is perhaps best summed up in the concise words of one of the Constitutions he promulgated at the Fourth Lateran Council in 1215:

Just as we do not want the laity to usurp the rights of clerics, similarly we must see to it that clerics do not claim the rights of the laity. And so we forbid all clerics to extend their privileges to the prejudice of secular authority, under the pretext of the liberty of the Church. On the contrary, they should be content with the written law and the previously approved customs, so that what is Caesar's will be rendered to Caesar, and what is God's to God, in accord with the objectively right order and what is proper to each.<sup>85</sup>

Having said all of this about the views of Innocent III, we should also recognize, perhaps more surprisingly, that something similar must be said about what Innocent IV in his own decretals and in his commentary as a distinguished jurist on the decretals of his predecessors himself had to say. No great gulf, in fact, separated his views on the relationship of papal authority to the jurisdiction of temporal rulers from those of Innocent III. On some occasions, indeed, his willingness to defer legally to the jurisdiction of temporal rulers may be judged to be more emphatic and more precisely conveyed than was the case with his distinguished predecessor.<sup>86</sup>

That duly noted, we have also, and in the third place, to recognize that the caution and nuance we have seen to be evident in Innocent III's decretals were lacking in the series of celebrated general statements about the nature of the papal authority which he had delivered in the first few years of his pontificate. Here the tension evident in the canonistic tradition between "dualistic" and "monistic" tendencies to which Watt alludes makes its presence felt also in Innocent's own thinking. For it is hard indeed to read these early pronouncements of his without concluding that in his heart of hearts, and lawyerly concessions to the realm of secular jurisdiction notwithstanding, Innocent really did believe the papal vicariate of Christ and papal possession of the plenitude of jurisdictional power to extend not merely to an "indirect" right to interfere in matters temporal *ratione peccati* but to something more direct and sweeping than that. He spoke, after all, of the royal authority as deriving "the splendor of its dignity from the pontifical authority," just as "the moon derives its light from the sun and... is lower than it in quantity and quality"; he insisted that to Peter was left "not only the universal church but the whole world to govern"; he told the Byzantine emperor that when Christ assured Peter and, through him, his papal successors that "whatsoever you bind on earth shall be bound also in heaven," he was

“excepting nothing when he said ‘Whatsoever.’”<sup>87</sup> He insisted, too, that as the Vicar of Christ who is king and priest “according to the order of Melchisedech,” the pope is “established by God as judge of the living and the dead.”

These last words are drawn from the crucial decretal *Per venerabilem* (1202) in which Innocent stated his conviction that the pope could choose “to exercise the office of secular power sometimes and in some things by itself, sometimes and in some things through others.”<sup>88</sup> In that decretal, or so it was interpreted by thirteenth-century canonists, Innocent was maintaining, in effect, “that the pope was supreme judge to whom appeal could be made in every kind of case, whether ecclesiastical or secular, whether civil or criminal, whenever the matter was difficult and ambiguous, so that lesser judges disagreed about it.”<sup>89</sup>

Emphasizing, as he did, the divine authority he wielded by virtue of the vicariate of Christ, himself king as well as priest, Innocent clearly believed that Christ had conferred upon the papal office an authority that was in nature regal as well as sacerdotal. Secular rulers might currently resist the idea that all temporal authority lay ultimately within the purview of that office, but Innocent III, no less than Innocent IV after him, appears to have assumed that humankind was in a state of providential transit toward the happy recognition of that fundamental reality.<sup>90</sup> Hostiensis, certainly, in his own commentary on *Per venerabilem* appears to have arrived at some such conclusion, echoing the essentially theocratic sentiments of the decretist Alanus Anglicus, insisting that although the royal and priestly jurisdictions were separate “the royal power receives authority from the priestly and not *vice versa*” and concluding that “in the order of greatness there is only one head, namely the pope,... one lord of spiritualities and temporalities, because the earth and fullness thereof belong to Him who committed all things to Peter.”<sup>91</sup>

Long, then, before James of Viterbo came to explore during the great standoff between Boniface VIII and Philip IV of France, the full ramifications of understanding the church or Christian commonwealth as a kingdom with the pope as its earthly king and in matters temporal no less than spiritual, the thirteenth-century popes had begun to close in on something approximating that mode of thinking. Despite the ideological ground yielded earlier on to the Gregorian onslaught, we have seen that a stubborn aura of sacrality continued in subsequent centuries to cling to the temporal monarchs of Europe. By the end of the thirteenth century, however, it had come to be dimmed by the astonishing degree to which the papacy itself, once the great enemy of sacral kingship, had come to conform itself to the lineaments of that archaic phenomenon and to appropriate for itself so many of the appurtenances attaching to it. As James of Viterbo was soon to claim, “The spiritual does not exclude the temporal but forms and perfects it.” And the church or Christian commonwealth, moreover, “is most rightly and aptly called a kingdom... the

kingdom of Christ,” as well, and no less properly, as “the Kingdom of his Vicar, of the Supreme Pontiff, who is truly called, and is, a King.”<sup>92</sup> But when he did so, he was rallying to the cause of a beleaguered Boniface VIII, the fortress of whose high imperial pretensions was coming now to be encompassed by the encroaching entrenchments of secular doubt.

## 8. The Christian Commonwealth (ii)

### *Disintegration*

Behold, Reverend Father, at dawn of the vigil of the Nativity of the Blessed Mary just past, suddenly and unexpectedly there came upon Anagni a great force of armed men of the party of the King of France and of the two deposed Colonna cardinals. Arriving at the gates of Anagni and finding them open, they entered the town and at once made an assault upon the palace of the Pope and upon that of the Marquis, the Pope's nephew....

After a time, however, the Marquis, nephew of the Pope, realizing that defense was no longer possible, surrendered to Sciarra and the captain, so that they spared his own life and those of his son and companions. In this fashion were the Marquis and one of his sons taken and thrown into prison, while another son escaped by means of a hidden passage. When the Pope heard this reported, he himself wept bitterly, yet not even the Pope was in a position to hold out longer. Sciarra and his forces broke through the doors and windows of the papal palace at a number of points, and set fire to them at others, till at last the angered soldiery forced their way to the Pope. Many of them heaped insults upon his head and threatened him violently, but to them all the Pope answered not so much as a word. And when they pressed him as to whether he would resign the Papacy, firmly did he refuse—indeed he preferred to lose his head—as he said in his vernacular: “E le col, e le cape!” which means: “Here is my neck and here my head.” Therewith he proclaimed in the presence of them all that as long as life was in him, he would not give up the Papacy. Sciarra, indeed, was quite ready to kill him, but he was held back by the others so that no bodily injury was done the Pope. Cardinal Peter of Spain was with the Pope all through the struggle, though the rest of his retinue had slipped away. Sciarra and the captain appointed guards to keep the Pope in custody after some of the papal doormen had fled and others had been slain. Thus [were] the Pope and his nephew taken in Anagni on the said vigil of the Blessed Mary at about the hour of vespers and it is believed that the Lord Pope put in a bad night.

*William Hundleby*

**HUNDLEBY'S ACCOUNT**, written by a nonpartisan eyewitness less than three weeks after the event, appears to be the only text on which it would be safe to

base a reconstruction of what exactly happened at Anagni. But although that account is dramatic and arresting enough to grasp the reader's attention, it remains the case, surprisingly, that contemporaries did not themselves make all that much of the incident. If Robert Fawtier's analysis is at all correct,<sup>1</sup> the reason for that may well be that contemporaries did not view it as the outrageous, French-engineered attack on the person of the pope that it has so often been taken to be. Instead, and in this like Fawtier himself, they may have understood it as a "procedurally correct" attempt to deliver to the pope a formal summons to appear at the general council that the French *parlement* had convoked in order to submit him to judgment. An attempt, of course, that went badly awry, for it coincided with an anti-papal uprising on the part of the populace of Anagni, and in the confusion ensuing, Sciarra Colonna, brother of the deposed Colonna cardinals and Boniface's bitter enemy, succeeded in violently subverting it. As a result, the intended diplomatic negotiation was replaced by the sorry sequence of events that we know as the "outrage of Anagni," events that subjected Boniface to abject humiliation, left him temporarily a prisoner of his Colonna enemies, and served, it seems certain, to precipitate the sudden collapse in his health that eventuated a few weeks later in his death at Rome. Only during the course of its aftermath, a protracted process of angry recrimination and mutual finger-pointing between the French and papal courts, did the significance of this whole extraordinary sequence of events begin to sink in. And only with the passage of time did Anagni come to symbolize, in much the same way as had Canossa more than two centuries earlier, an historic turning point in the long and fraught history of relations between the spiritual and temporal authorities in Christendom.

Historic, however, it surely was, and its symbolic significance is not to be gainsaid. "The mere thought," Ullmann has rightly observed, "of an armed troop storming Innocent III's abode and demanding his imprisonment, would have seemed a plan born of criminal lunacy."<sup>2</sup> And yet less than ninety years later that is precisely what had happened in the case of Boniface VIII. It could hardly have done so had not a whole series of disparate but convergent factors come together at the end of the century to form what amounted to a "perfect storm." Of those factors, we can concern ourselves here with only three,<sup>3</sup> but they were the more unfortunate in that they coincided with a further development: the rise of the French kingdom to a position of European hegemony.

The first of the factors in play was a marked deterioration in the authority and prestige of the papacy. This had begun to become evident in the latter half of the thirteenth century, which witnessed the opening up once more of the dangerous gap between the grandiosities of papal theoretical pretension and the limits of actual papal power that in earlier centuries had so often been characteristic of papal history.<sup>4</sup> If the protracted struggle with the emperor Frederick II had been crowned with victory, it was a victory won at great cost. The papally sponsored "crusade" against Frederick and his Hohenstaufen

successors had attracted little support and had served to sow subversive seeds of doubt about the responsiveness of the papacy to truly spiritual needs. And Frederick's appeal from the papal sentence of deposition to the judgment of a future general council had set a dangerous precedent that was later to cast a threatening shadow across Boniface's troubled pontificate.

At the same time, as the century wore on, and in the second place, there was a significant deepening in the level of discontent among the clergy themselves, discontent that had become evident as early as 1245 at the First Council of Lyons. Its principal cause was the increasing centralization of ecclesiastical government in the hands of the papal monarch at Rome. But it can be traced also, at least in part, to the growing disgruntlement of the secular (i.e., diocesan) clergy with the disorder generated in the normal episcopal administration of the provincial churches spread across Christendom by the privileges and exemptions Innocent III's papal successors had heaped upon the Franciscan and Dominican friars. From the late thirteenth century onward, as the course of the struggle between Boniface VIII and Philip IV was to make clear, this discontent with Rome was such as to dispose some of the secular clergy, subject also as they were to the pressures that their national rulers could so easily place on them, to side at moments of crisis with their own kings rather than with the papal "king of kings."

Finally, at Rome itself, the fulcrum upon which the whole international machinery of government had by now come to pivot, the papacy found its position threatened once more, as so often in the past, by the clashing ambitions of the local Roman nobility. The College of Cardinals, a body of growing importance in the governance of the church at large, was now riven by feuding between the Orsini and Colonna families. As a result, the closing decades of the thirteenth century were punctuated by a series of very difficult papal elections and concomitantly long vacancies in the papal office. Some of those vacancies lasted as long as two to three years, a scandalous situation exacerbated by the markedly high turnover in the papal office during these years. Noting that it was hardly a "situation conducive to a prosperous functioning of the [papal] institution," Walter Ullmann put his finger on the fact that during the forty years preceding the accession of Boniface VIII in 1294 there were three times as many popes (twelve as opposed to four) as there had been in the roughly forty years (1216–54) before that. Seven of the years in the 1254–94 period were distinguished by the fact that there was no pope at all; one (1276–77) by the fact that it saw no less than three popes come and go.<sup>5</sup>

It was in 1294, then, in the wake of a vacancy of more than two years, that matters finally came to a head. They did so with the onset of two particularly significant but singularly ill-juxtaposed pontificates—those of Celestine V (July–September 1294) and Boniface VIII. It was a case of the wrong men in a crucial role at wholly the wrong time and in quite the wrong sequence. A



deadlock caused by the Orsini-Colonna rivalry led the cardinals to turn improbably to an eighty-year-old outsider, the “angel pope,” a devout Benedictine hermit Peter of Murrone, who was wholly inexperienced in matters governmental. Amid signs of mounting administrative chaos he was soon prevailed upon to abdicate from his high office, and Boniface was quickly elected to succeed him. But it was less accrued governmental confusion than Celestine’s manifest unworldliness, the fact that a papal abdication was unprecedented and not viewed universally as licit, as well as the consequent shadow of doubt cast upon the legitimacy of his own title that made Boniface’s task so very difficult. It was rendered no easier, moreover, by the circulation of scurrilous rumors to the effect that he had had a hand in Celestine’s abdication and even (after 1296) in his death. Hence the pall of doubt and suspicion that hung over his pontificate right from the start, to such a degree, indeed, that even his unquestionably positive achievements came to generate problems for him. Thus the improvements he wrought in papal fiscal administration and by his suppression of disorder in the Papal States brought him into conflict with the Colonna interests, a conflict that came to proliferate in exceedingly damaging ways.

It led first to Boniface’s harsh measures of 1297, his excommunication of the two Colonna cardinals, James and Peter, and his depriving them of their rank. It led next to the Colonna circulation of a manifesto questioning the legitimacy of Boniface’s papal title, charging him with grave (if improbable) sin, and calling upon the secular rulers of Christendom to assemble a general council of the church to sit in judgment upon him. And it led finally, after Boniface had raised the issue of royal taxation of the French clergy, to something of a coalition of forces between the deprived cardinals, now out for vengeance, and the counselors of the French king. Although he was a capable and hard-headed administrator, Boniface was also an undiplomatic, overconfident, and formidably stubborn old man, committed to what was, with the rise of powerful and proudly independent national monarchies, rapidly becoming an anachronistically high notion of papal authority and to a rigorous implementation of the jurisdictional and fiscal rights that were seen to flow from it. About the claims for clerical independence that he attempted to vindicate in his dealings with Philip IV there was ultimately nothing novel. What was novel instead was the infelicity of his timing in raising them, as also, by way of response, the forthright unwillingness of the French monarch to accede to them. The first of those claims, if conceded, would have cut off in a time of war between England and France one of the principal sources of royal revenue. It involved, in effect, an attempt to revive in all its rigor a decree of the Fourth Lateran Council (1215) that had long been honored more in the breach than the observance, stipulating that without prior papal permission clergy were not to acquiesce in royal attempts to tax them. This claim Boniface trumpeted forth in the bull *Clericis laicos* (1296). But he did so to no avail. The prestige of the papacy had fallen too low to permit

successful recourse to the spiritual weapon of excommunication (tarnished, in any case, by overuse), and in 1297 Boniface was forced to back down. So low, indeed, had that prestige fallen that a subsequent clash led to the final disastrous confrontation at Anagni. That clash was touched off in 1301 when Philip, on the grounds of a trumped-up charge of treason, moved to prosecute Bernard Saisset, bishop of Pamiers, in a royal rather than an ecclesiastical court and in direct contravention of the provisions of canon law. In the bull *Ausculda fili* (December 1301), later to be skillfully and damagingly misrepresented by the royal propagandists, Boniface issued a blunt and stinging rebuke to Philip. And in the subsequent (and subsequently celebrated) bull *Unam sanctam* (November 1302) he voiced a ringing affirmation of his own supreme authority. The great issue, thus, was joined. The Colonna cardinals revived their coalition with the French king's advisers, calling again for a general council to judge the pope, and there was set in motion the extraordinary sequence of events that led up to the degradation of Boniface at Anagni and his death a few weeks later.

In the history of the later medieval church at large an exaggerated significance has often been attached to the events at Anagni and to the conflict leading up to them.<sup>6</sup> In the history of political thought, however, it would be hard to overestimate their importance. They stimulated an efflorescence of political writing comparable in its dimensions with that precipitated by the Investiture Contest two centuries earlier, but in some respects of greater intellectual profundity and of more universal import than anything stemming from that earlier conflict. They also served to focus sustained attention once more to matters concerning the internal constitution of the church. It will be recalled that the Concordat of Worms, which in 1122 brought the Investiture Contest to a close in the empire, had been silent on three great, testing issues that had come to the fore at one point or another during its course: first, the papal attempt to secularize the royal office, to consign kings to the ranks of the laity, and to claim for itself a measure of jurisdictional superiority to them even in matters temporal; second, the internal constitution of the universal church and the role of the bishops in its governance; third, the narrower question of the constitution of the Roman church and the prerogatives in its governance to be accorded to the members of the College of Cardinals.<sup>7</sup> We have seen that the first of those three issues became the focus of intensive commentary during the twelfth and thirteenth centuries, and it was to remain the central focus in the new body of literature generated by the struggle with Philip IV. In that literature, however, we see resurfacing also the other two essentially ecclesiological issues that had gone unmentioned in the Worms settlement. To that body of literature we must now turn, focusing first on the theoretical claims advanced by Boniface himself and on the responses they elicited from the French royal propagandists, then on the more overarching theopolitical analyses produced when some of the leading theologians of the day chose to enter the lists.<sup>8</sup>

## Papal Assertions and Regalist Reactions

The historical significance of the three celebrated bulls that Boniface VIII promulgated during the course of his conflict with Philip IV—*Clericis laicos*, *Ausculta fili*, and *Unam sanctam*—has little to do with their actual content. About that content there was really nothing novel or original. By the early fourteenth century the sentiments they expressed and the claims they advanced had become familiar enough to count as traditional in high papalist circles. Far more important, at least in pragmatic terms, was the infelicity of their timing and, from the theoretical point of view, the fact that those sentiments were being expressed and those claims advanced not by academics in the quiet of the classroom but by papal authority amidst the turmoil of a historic confrontation between the papacy and the king of France. They now possessed an importance that was unquestionably practical; they were no longer open to any dismissal as “merely academic.”

At the same time it can hardly be claimed, without a measure of “overreading,” that they really gave voice to the most extreme hierocratic views of the day. Their framing was too cautious, their language generally too guarded. In the case of *Unam sanctam*, the most general and sweeping of the three documents, the final moment of doctrinal definition toward which the arguments set forth in the body of the bull all lead does not even refer to the relationship between the spiritual and temporal authorities. Drawn in fact from a work of Aquinas’s concerned with Greek Orthodoxy, they focus instead on the *spiritual* supremacy of the papacy *within* the church.<sup>9</sup> And it may well be that these crucial concluding words were inspired less by any desire to vindicate the power of the papacy in matters temporal than by Boniface’s concern about the effect of royal pressure on the French bishops and the possibility that they might waver in their loyalty to Rome.<sup>10</sup>

Such caveats duly posted, and although Cardinal Bellarmine three centuries later could portray *Unam sanctam* as attempting to vindicate nothing more than an *indirect* power of papal intervention in matters temporal *ratione peccati*, here, as in the other two bulls, it is hard not to discern an at least implicit commitment to the more sweeping claim that in such matters the pope could properly exercise some sort of more *direct* power.<sup>11</sup> However much the arguments set forth in the body of *Unam sanctam* owe to the older and more pliable words of Bernard of Clairvaux and Hugh of St. Victor,<sup>12</sup> they were now framed in such a way as to be understood by contemporaries as claiming that it was the spiritual power which had established the temporal, and that the latter was not merely inferior to the former “in dignity and nobility” but actually subordinated to it. The message most obviously conveyed by *Clericis laicos* and *Ausculta fili* was similar. In the case of the former, the laity were bluntly informed that “power over clerks and ecclesiastical persons or goods is forbidden them.” And that meant, current claims to national sovereignty notwithstanding, that kings “possessed no authority over ecclesiastical

persons or ecclesiastical goods [even] within their own realms.”<sup>13</sup> In the case of *Ausculda fili* Boniface rebuked Philip IV with the words “God has set us over kings and kingdoms” and that “he is a fool,” “an unbeliever,” who suggests that “you have no superior or that you are not subject to the head of the ecclesiastical hierarchy.”<sup>14</sup> The precise nature of the claim being made is not, admittedly, altogether clear. But *Deum time*, the royally inspired and widely circulated forged version of the bull, sharpened the papal claim in such a way as boldly to assert Philip’s subjection to the pope in matters temporal no less than spiritual. Even had that not been the case, contemporaries would understandably have been inclined to read Boniface’s somewhat more guarded formulations in light of the sweeping claims advanced by some of the theologians who rallied to his defense and who argued to the effect that the pope possessed a power in matters temporal that was altogether *direct*.

Certainly, the vigorous propagandists (usually lawyers) who exerted themselves on the French king’s behalf were not prone to minimizing the reach of the claims they attributed to the pope. Appealing to precedent, national sovereignty, and a species of legalistic commonsense, they moved in forthright fashion to repudiate them. Thus tartly reminding the pope that Christ did not “die and rise again for the clergy alone,” the anonymous author of the tract known by its opening words as *Antequam essent clerici* (*Before There Were Clerics*, 1296–97)<sup>15</sup> simply brushed to one side the papal claim in *Clericis laicos* that without explicit permission and on pain of automatic excommunication clerics could neither be taxed by secular rulers nor acquiesce in being so taxed. The church consisted “not of clerics merely but of lay persons also,” and if lay folk are bound to render to Caesar what is Caesar’s, in the same way so, too, are clerics. Those, indeed, who “forbid or refuse” to support the efforts of the king to defend the realm against its enemies “do not prudently attend to the fact that this is nothing other than to aid the enemy and to commit the crime of treason, as if wishing to betray the commonwealth’s very defender.”<sup>16</sup>

Similarly, the anonymous author of *Disputatio inter clericum et militem* (*Debate between a Clerk and a Knight*, ca. 1301–2),<sup>17</sup> who also devotes much effort, in fairly commonsensical fashion, to repudiating the papal denial of the king’s right (in the absence of papal permission) to levy taxes, in case of necessity and for “the defence of the commonwealth,” on the clergy who dwell within the boundaries of his realm. Did not St. Paul say (Rom. 13: 1 and 7), having insisted that *every* soul—that is, cleric as well as layman—should be subject to the higher powers, “Render therefore to all their dues in tribute to whom tribute is due; custom to whom custom.”<sup>18</sup> Should appeal be made to some imperial law stipulating the contrary, it must be insisted that imperial writ does not extend to the kingdom of France. Within the boundaries of his realm, the French king acknowledges no superior. “Just as all things lying within the frontiers of the empire are acknowledged to be subject to the empire, so those things lying within the frontiers of France are subject to the

kingdom.”<sup>19</sup> Similarly, should appeal be made on such temporal matters to “the decrees of the Roman pontiff” it must again be insisted that “no one can make statutes in respect of those things over which it is clear that he has no lordship or authority.” Just as the emperor can make no statutes that apply to the kingdom of France, or “earthly rulers” in general (*terreni principes*) laws that pertain to spiritual things, in precisely the same way neither can ecclesiastics issue decrees concerning the temporal.<sup>20</sup> Christ proclaimed, after all, that his kingdom was not of this world and he “entirely renounced” the exercise of temporal power. How, then, can clerics attribute such a power to his vicar, the papal successor of Peter, whom Christ rather than crowning as king had ordained as priest and bishop?<sup>21</sup> And even when, in response to this blunt dismissal, the clerk turns to the traditional and more limited notion of an incidental papal power to intervene in temporal affairs on the grounds that sin was involved (*ratione peccati*), the knight dismisses that claim, too, as something of an absurdity. Allow that route to be opened up, or so he implies, and the ecclesiastical jurisdiction would soon engross the whole and condemn the secular courts to sheer redundancy.<sup>22</sup>

From this point of view, not only was the pope’s power treated as purely spiritual but the pope himself, in this like the emperor, was to be classified very much as a foreign potentate whose writ did not run within the borders of the kingdom of France.<sup>23</sup> Insofar as one can divine his own (characteristically occluded) views and intentions, Philip IV would himself appear to have sympathized with such sentiments, affirming robustly that he acknowledged no superior and did not intend “to submit or subject himself in any way to any living man.”<sup>24</sup> And the author of yet another anonymous tract dating to 1302, the *Quaestio de potestate papae* or *Rex pacificus* (*An Enquiry into the Power of the Pope* or *The Peacemaking King*), goes, if anything, even further.<sup>25</sup> The tract is constructed in the form of a scholastic disputed question. In its conclusion the author insists that one should not infer from the pope’s title as Vicar of Christ that his power extends to the temporal sphere. That would be to confound what Christ, who insisted that his kingdom was not of this world, had been careful to distinguish. While the pope is indeed his vicar, he is so only in matters spiritual. For the temporal government of this world, and as St. Paul suggests, Christ has in fact appointed another vicar, namely the temporal ruler.<sup>26</sup> But while the author insists, accordingly, upon the separation and independence one from another of the two spheres, temporal and spiritual, he also contrives to impute to the temporal power a certain priority and to subordinate the clergy to it in matters temporal, leading Scholz thereby to label him as something of a sympathizer before the fact with the type of secularism that Marsiglio of Padua was later to evince.<sup>27</sup>

Of course, none of these royal sympathizers was a truly systematic thinker. Their instinct was to flourish scriptural texts, deploy legal precedent, and to respond *seriatim* to the arguments of their papalist adversaries. For them, the hallowed vision of a unitary and universal Christian commonwealth was no

longer an arguing point. Instead, they took their stand on the sturdy platform of French national sovereignty within its territorial borders. It was left, as a result, for the theologians of the day, high papalists and their critics alike, to attempt a more theoretically ambitious and overarching approach to the matters at hand. This they did by situating those issues in a broader intellectual framework that was at once more universal and less narrowly time bound. In the effort to do so they were led to produce theopolitical treatises that were much more than merely occasional pieces and marked, as a result, the opening of something of a new phase in the unfolding history of Western political thought.

## **The Theoreticians of High Papalism: Henry of Cremona, Aegidius Romanus, and James of Viterbo**

Three authors, all of them moved to address themselves to matters ecclesiological and political by the great upheaval of theopolitical spirit that the great clash between Boniface VIII and Philip IV had precipitated, stand out as the most prominent among the theoreticians of high papalism at the turn of the thirteenth and fourteenth centuries. Of the three, James of Viterbo, whose *De regimine christiano* we have already addressed,<sup>28</sup> stands out as unquestionably the most impressive, producing a treatise that is at once subtle, sophisticated, coherently constructed, and skillfully executed. Henry of Cremona (d. 1312), on the other hand, who in his *De potestate papae* (*On the Power of the Pope*) attempted to vindicate extreme hierocratic views, is the least impressive.<sup>29</sup> His tract is not simply the shortest of the three and in its substance the most predictable, it is also the most combative in tone and the one most readily classifiable as an occasional piece of controversialist writing. It deserves mention, however, if for no other reason than the fact that it appears, as we shall see, to have made something of an impression on John of Paris (ca. 1250/54–1306). Although John refers to Henry condescendingly as “a fellow from Cremona, doctor, so he says, of canon law,” he does draw from him a series of hierocratic arguments that he clearly found telling enough to call for refutation.<sup>30</sup>

The *De ecclesiastica potestate* (*On Ecclesiastical Power*) of Aegidius Romanus, on which we will be concentrating here, falls in quality somewhere between the other two treatises. Written in 1301, roughly twenty years after his *De regimine principum*<sup>31</sup> and dedicated fulsomely to Boniface VIII, it departs so markedly in perspective, content, and tone from the secularity and Aristotelian “naturalism” of that earlier work that some scholars have toyed with the possibility that Aegidius may not have been its author at all. They have not succeeded, however, in rendering that possibility at all plausible.<sup>32</sup> Despite the treatise’s obvious shortcomings it is still, and in this like James of Viterbo’s *De regimine christiano*, a work possessed of a measure of originality. But before proceeding to explore that originality, it would be

appropriate to acknowledge those shortcomings. The work gives the impression of hasty composition and inadequate revision. In organization it is somewhat flaccid. The flow of argument does not always align with its formal structure and it is periodically clogged by exercises in redundant recapitulation. It was not for nothing that Aegidius was known to contemporaries as the *doctor verbosus*. This work, certainly, can be mind-numbingly repetitious. He himself, it appears, was not altogether unconscious of that fact. Halfway through the *De ecclesiastica potestate* he seems to have been overtaken by a seepage of doubt, leading him to concede the fact that many a reader might feel that “much more has been said than the present question requires; for it may seem that one and the same argument has been frequently repeated.” He devotes, as a result, no less than half a page to justifying his procedure on the grounds that he wishes to dispel the ignorance of the whole Christian people, among whom there are “many whose intellect is dull and gross.” Such people, he adds, are akin to toothless “infants in Christ” and their teachers, accordingly, “must be like nurses who chew the food before they give it to their charge.”<sup>33</sup> Without any further episodes of self-consciousness, chew on manfully he does, and the same argument, though approached sequentially from many a different direction, really is “endlessly repeated.”

But what is that central argument? Here, even without the endless repetition, Aegidius leaves no room for doubt and frames his basic position in clear and forthright terms. His thinking presupposes the continued existence of a unitary Christian commonwealth to which any notion of royal sovereignty bounded by national or territorial borders is really quite alien. It presupposes, too, a commitment to the view that that commonwealth is a monarchy, at once both sacred and absolute, and that “everything that can be said about ecclesiastical or priestly power is also a statement about papal power.”<sup>34</sup> Two powers, he says, rule this commonwealth: the spiritual power wielded by the church and quintessentially by the pope, and the temporal power wielded by kings or other temporal rulers. Of the two, the former, or spiritual power, precedes the latter not only in time but also in honor, dignity, and direct jurisdictional power. This spiritual power is the agency whereby the temporal came into being and is likewise the agency whereby the secular rulers who wield that temporal power can be judged and, if necessary, dismissed from office. As he puts it in a central statement:

Just as in the universe itself, the whole of corporeal substance is ruled through the spiritual—for the heavens themselves, which are supreme among corporeal substances and which have influence over all bodies, are governed through spiritual substances through the intelligences which move them, so among the faithful themselves, all temporal lords and every earthly power must be ruled and governed through the spiritual and ecclesiastical power; and especially through the Supreme Pontiff, who holds the supreme and highest rank in the Church and in



Spiritual power. But the Supreme Pontiff himself must be judged only by God. For... it is he who judges all things and is judged by no one; that is, by no mere man, but by God alone.<sup>35</sup>

To this central position Aegidius rallies again and again and from more than one angle. Whereas the authority pertaining to “secular rulership and earthly powers” (*principatus saecularis et potestates terrenae*) is “particular and inferior,” that of the spiritual power is “universal and superior.” For “the Church... is Holy and Catholic, that is, universal; but she would not be truly universal if she did not rule universally over all things.” Accordingly, “the clergy, who are not under the earthly power, are in a more perfect state than are the laity, who are placed under the earthly power” which is but particular and certainly not “universal in such a way that one cannot obtain salvation unless he is under it.”<sup>36</sup> Or again, evoking now the arresting image of the blacksmith who uses his hammer as an instrument to strike the piece of iron placed on the anvil, Aegidius argues that “the earthly power is... [likewise] a kind of instrument and a kind of hammer of the ecclesiastical power; and though the earthly power has lordship (*dominium*) over temporal affairs, it receives this from the ecclesiastical power just as the hammer receives the capacity to strike the piece of iron from the blacksmith. For no one is a prince over temporal things who either does not have it from the Church that he is a prince, or does not have it from her that he is a true and worthy prince.”<sup>37</sup> Or yet again, taking his cue from Luke 22:38 (“Lord, here are two swords”), what he had to say about the spiritual and material swords, the term that for centuries had been used to signify the spiritual and temporal powers. References to the two swords and the relationship between them are broadcast across the entire work, but he focuses on them most intently in two clusters of chapters at the end of parts 1 and 2, respectively.<sup>38</sup>

In the chapters in question he comes at the matter repeatedly and from various angles. But his basic conclusion, while not always worded in the same way, is always essentially the same. Echoing Bernard of Clairvaux and proclaiming it to be “the unanimous judgment of the learned,” he states that the church possesses both swords, spiritual and material, “but not in the same way; for she has the spiritual to use and the material to command” (*in spiritualem habet ad usum, materiale ad nutum*).<sup>39</sup> While the church does not itself directly wield the material sword, that sword is nevertheless attached to it as “a support and helper.” Thus if it is not wielded “by the Church” (*ab ecclesia*), it is still wielded, nonetheless “on her behalf” (*pro ecclesia*), and it “receives the power which it has from the spiritual,” so that both swords “belong to the Church” and lie within “the power of the Supreme Pontiff.”<sup>40</sup>

“The Church has both swords,” therefore, “with a primary and superior [as opposed to a secondary and inferior] authority.” If

temporal things are subject to the immediate and executory jurisdiction of the material sword, then, because the material sword is itself subject

to the spiritual, the temporal things which are, and inasmuch as they are, under the immediate and executory judgment of the material sword must also be under the superior and primary jurisdiction of the spiritual sword. Thus, if the material sword itself off ends in relation to temporal things and even in relation to those matters which are [immediately] entrusted to its government, the spiritual sword will be able to act against the material sword for its fault or for some other reason.

The church, therefore, and, accordingly, the Supreme Pontiff, “can never lack a superior and primary jurisdiction over temporal matters,” and “the spiritual sword is the lord of all things [and of all men].”<sup>41</sup>

And so on. In support of his central high papalist commitments Aegidius marshals a variety of arguments. Some draw on such twelfth-century authors as Bernard of Clairvaux and Hugh of St. Victor.<sup>42</sup> Others are based directly on the testimony of Scripture itself, notably on 1 Samuel 8, describing the appointment under the Old Law of the first Hebrew king Saul by command of God but via the agency of the prophet Samuel. This Aegidius evokes as a prototypical event foreshadowing the role played by the priesthood under the New Law in the appointment and consecration of temporal rulers.<sup>43</sup> For “since former things are the patterns and a mirror of later, all later kingships must be referred back to the first, which was instituted through priesthood at the command of God.”<sup>44</sup> Other arguments, again, draw on Aristotelian teleology, with its orientation of lesser goods to greater, and from Pseudo-Dionysian/Neoplatonic thinking, with its profound sense that all creatures in the universe from the inanimate via the animate to the human and angelic are arrayed in a divinely ordered hierarchy which is mirrored on earth in the hierarchically ordered ranks of ecclesiastical and temporal rulers.<sup>45</sup> So deeply indeed was this latter way of thinking rooted in Aegidius’s mind that he could devote several paragraphs not only to the hierarchical ordering of “the good angels... for the salvation of the Elect” but also to the ordering of the demons “in such a way that men may be the more harmed.”<sup>46</sup>

Of greater originality, however, is a further line of argument which, because of its centrality to Aegidius’s overall position, and because of its impact on the thinking of such subsequent scholastic figures as John of Paris, Richard Fitzralph (ca. 1300–1360), Pierre d’Ailly (1350–1420), and John Wycliffe (1335/38–84),<sup>47</sup> calls for somewhat more extended commentary. The line of argument in question is that which he develops from the seventh to the twelfth chapters of the second part of his treatise and it pivots on the notion of *dominium*. I retain the Latin term rather than rendering it into English as “lordship” or “dominion” (the usual words chosen) because although not untranslatable, it does defy accurate *transliteration*. By *dominium* the Roman lawyers had meant property or right of ownership, and Aegidius certainly uses the word in that way when he speaks for example of the *dominium* of “the paternal inheritance” (*hereditas paterna*) or of the

“paternal estate” (*res paterna*).<sup>48</sup> But citing with approval the words of Hugh of St. Victor, he can also move to distinguish “two kinds of *dominium* in temporals, of use and of power.” What he calls *dominium* of use consists in the right to enjoy fruits; that which he calls *dominium* of power is jurisdictional in nature, and to it “belongs the execution of justice.”<sup>49</sup> In this latter case he is clearly referring to a power that extends beyond proprietary right. He is, in effect, reflecting the fact that in medieval usage the word *dominium* had a broader connotation than our word “property” while still retaining proprietary shades of meaning that our modern “dominion” does not possess and that “lordship” would not properly convey. Whereas “lordship” has lost much and “dominion” has lost all of its former proprietary connotation, the medieval *dominium* had “to stand now for *ownership* and now for lordship.”<sup>50</sup>

When used in the Middle Ages to denote proprietary right, moreover, *dominium* no longer retained the sense of unique and indissoluble ownership it had possessed in Roman private law.<sup>51</sup> Proprietary notions derived from early Germanic landholding practices and modulated under the societal conditions we are accustomed to identifying as “feudal,” ownership had come to be conceived as no longer necessarily unitary or exclusive. Divided and conditional ownership came to be common, and by the eleventh century the rights of a vassal over his fief had come to extend far beyond those allowed by the old Roman concept of usufruct.<sup>52</sup> In their effort to reconcile such notions with Roman legal ideas, the twelfth-century civilians finally succeeded in doing so (if at the cost of a somewhat forced interpretation of Roman private law) by means of the doctrine of *divided dominium*. According to this the vassal was conceded to possess a real proprietary right in his fief, for he possessed the *dominium utile* or useful ownership of it. At the same time, it was insisted that the vassal’s lord had by no means forfeited his own ownership for he was said to possess the *dominium directum* over the property, a right sometimes known in more modern times as that of “*eminent domain*.”<sup>53</sup>

A society arose, therefore, in which *divided dominium* had come to be the norm and to be enshrined at the very heart of the law, one in which a multiplicity of rights could exist in any one piece of land, each protected by the appropriate legal remedy. But, as we saw in the previous volume,<sup>54</sup> feudal relationships were concerned with more than land or the payments arising from the use of land. Of its very nature, and apart from issues pertaining to divided ownership, feudalism had from the start involved a personal element of protection offered in return for services pledged. Later on, moreover, with the collapse of central government, there had entered into the feudal relationship elements that were judicial and administrative in nature. In this way the Roman distinction between public and private law and between “ideas of proprietary right and governmental authority” had come to be broken down, and to the term *dominium* had come to accrue the jurisdictional

and political connotations which were to be so evident when Aegidius came to discuss it. But while his conception of *dominium* could hardly have been formulated against an institutional background other than that of a feudalized (or once feudalized) society, it also derived much of its hierarchical coherence from patristic, Neoplatonic, Pseudo-Dionysian, and Aristotelian ideas, all of them converging on the conviction that the whole of creation (in which all power—natural, temporal, spiritual—comes from God), the world of man no less than the world of nature, was hierarchically ordered according to the principle of rule and subordination.<sup>55</sup> “The theory of *dominium* in its complete form,” then, “implies a combination of ideas” which served as a basic presupposition for Aegidius’s discussion of the matter. That combination of ideas could not have come together much before his day, and the earlier debates between mendicants and seculars or Franciscans and Dominicans notwithstanding,<sup>56</sup> “he seems to have been the first of whom we have any knowledge to see and take full advantage of all its implications as an argument for papal claims.”<sup>57</sup>

In light of the foregoing, then, that Aegidius was able to use the notion of *dominium* in support of his high papalist claims may be said to have presupposed four things. First, the fact that the word *dominium* could be used to denote both power over temporal things and power over persons. Thus he is able to mount a single argument to the effect that “there is no *dominium* with justice, whether it be *dominium* over temporal things... or over lay persons, except under the Church and as instituted through the Church.”<sup>58</sup> Second, the idea of *divided dominium*, the notion, that is, that a multiplicity of rights could exist in a single piece of property or in the exercise of jurisdiction over persons. Thus he is able to concede the fact that “Caesar, or the secular head, has... a large right in temporal things,” while at the same time insisting that “the Church... has over all things, even over temporal goods, a universal, superior, and primary right; not, however, in such a way that Caesar is deprived of his right.”<sup>59</sup> Third, his commitment to the further belief that all such rights, along with the natural world and the universe as a whole, find their place in an ordered hierarchy of rule and subordination. Thus he believed it to be clear “from the order of the universe that the Church is placed above nations and kingdoms” and that “according to Dionysius... it is the law of Divinity to lead the lowest back to the highest through the intermediate.”<sup>60</sup> Fourth, the fact that he chose to bring all such things together and into contact with certain crucial texts in the second and nineteenth books of Augustine’s *De civitate dei*. The texts in question were the celebrated passages in which Augustine had weighed the veracity of the Ciceronian definition of a true commonwealth (*res publica*) in accordance with which justice, the rendering to each his due, was of its very essence, and had concluded that there could be “real justice” or “true justice” (*justitia vera*) only in the community in which the one, true God was given his due.<sup>61</sup>

As we saw in the first volume of this series,<sup>62</sup> it was Augustine’s

conclusion that the only commonwealth in which “true justice” was to be found was not an earthly commonwealth at all, not even that commonwealth which we know as the (visible) Church Militant. Instead it was the transpatial and transtemporal City of God with which that church “as it is now” cannot fully be identified. With that strictly Augustinian position, however, Aegidius along with other medieval clericalist writers had long since parted company, incorrectly attributing to Augustine himself the species of “Augustinisme politique” which, identifying the visible church with the *civitas dei* and attributing to it, therefore, the possession of “true justice,” was an essentially theocratic pattern of thought, within the modalities of which there was a marked tendency to respiritualize politics, to absorb the natural order into the supernatural, and to subordinate the profane laws of civil society to the sacred laws mediated by the ecclesiastical order.<sup>63</sup>

As a result Aegidius was led to argue, *dominium* being for him the divinely ordained relation of superior being to inferior, that “there can be no *dominium* over temporal things or... over lay persons, except under the Church and as instituted by the Church.” For “there is no true justice save in that commonwealth whose founder and ruler is Christ” (Augustine, *De civitate dei*, 2:21). But “none are under Christ as ruler unless they are under the Supreme Pontiff, who is the Vicar-General of Christ.”<sup>64</sup> Unless regenerated via the sacramental ministrations of the church, delivered from original sin through baptism and from actual sin through penance, kings lack justice and, lacking justice, are not true kings. Hence, and parting company here with the more moderate and “naturalistic” position of an Innocent IV or of Aquinas,<sup>65</sup> he insists that “there are no true kingships among unbelievers; rather, according to what Augustine says, there are only certain great bands of robbers.”<sup>66</sup> Hence, too, the person who has been excommunicated “because he is deprived of the communion of the faithful, is deprived of all the goods which he possesses as a faithful man and among faithful men.” Like the unbeliever, in fact, he is “unworthy of all possessions and all *dominium*.”<sup>67</sup>

According to Aegidius, then, the de facto exercise of authority, either proprietary or governmental, even when it serves the ends of social utility and is in accordance with the human laws of inheritance, can give merely a presumptive title to *dominium*. The latter is truly possessed only if the person claiming to exercise it is in proper subordination to God and has received it through the church and the grace of God. Because the sacraments of the church are the channels of that divine grace, pagans and those excommunicated can have no just *dominium*. Nor, indeed, can there be any true *dominium* whatsoever except that subject to the church, which has, therefore, a superior, universal, and primary *dominium* over all persons and things.

In advancing such sweeping claims on behalf of ecclesiastical power in general and papal power in particular Aegidius was not unaware of the fact

that pivotal decisions handed down in specific cases by such leading popes as Alexander III and Innocent III, and later incorporated into the established body of canon law, reflected a more cautious and circumscribed view of the normal reach of papal power than the one he was striving to vindicate. The crucial decisions in question were the decretals *Si duobus* of Alexander III and *Novit, Licet, Venerabilem*, and *Per Venerabilem* of Innocent III. In all of these, as we saw in the preceding chapter,<sup>68</sup> the popes in question had refrained from basing their decisions on the notion that the vicariate of Christ, who was king and priest, had conferred upon the pope any supreme or overriding authority in matters temporal no less than spiritual. That being the case, Aegidius clearly concluded that he would be well advised to remove the sting from such inconvenient precedents and, on the principle presumably that “authority has a nose of wax,” to bend them in the direction of his own, more extreme, high papalist claims. To that effort he devoted, in fact, much of the third and final section of his treatise.

As is not infrequently the case with such scholastic responses to putative objections to the case being argued, the responses Aegidius offers tend to be tangled, technical, sometimes unclear, and punctuated unhelpfully by digressions. This is not altogether surprising as they constitute, at least in part, something of a commentary on the specific decretals that are causing him concern.<sup>69</sup> But cutting across the specificities and technicalities involved in that sort of effort are two arguments of more general import which, by way of conclusion, warrant a brief measure of attention. Both are perfectly forthright, and the second, at least, is revelatory of the sheer sweep of his hierocratic views.

The first argument makes the case that (unlike emperors and secular kings) “a previous pope can in no way prejudice his successor by what he does and by the laws he establishes.” “Because the Supreme Pontiff is judged by no one and has no one as his superior in the Church Militant,” he can simply set aside the judgment of a papal predecessor.<sup>70</sup> This argument is certainly by itself capable of disposing of any difficulty constituted by the troublesome decretals in question. But noting in the same place (part 3, [ch. 1](#)) that “it is not fitting not to defer to the words of the Supreme Pontiff, who is lord of the city [of Rome] and the world” (*dominus urbis et orbis*), he goes on to deploy a second argument likewise general in its applicability.

In this second line of argument, to which Aegidius returns repeatedly in passages broadcast across the second and third parts of the *De ecclesiastica potestate*,<sup>71</sup> he deploys (though he does not use the precise terminology) what we have called the “operationalized” version of the theological distinction between God’s power considered as absolute and as ordained (*potentia absoluta et ordinata*), a distinction we have seen the great canonist Hostiensis and others apply by way of analogy to the pope.<sup>72</sup> Aegidius makes that move to preclude, it seems, any underestimation of the reach of papal power based

on the commonsense observation that the government of temporal things normally resides de facto in the hands of kings and secular rulers. Should we be tempted to draw from that day-to-day state of affairs any minimizing conclusions, he urges us, in effect, not to forget that the de facto operation of the natural world in the ordinary course of things similarly proceeds via the agency of (natural) secondary causes and that that in no way derogates from the omnipotence of the supernatural first cause whom we call God.

His argument, then, proceeds as follows. There is, he says, “a certain similarity between the power which the material sword receives from the Church and the power which natural things receive from God.”<sup>73</sup>

Just as there is one fount in the government of the whole world—there is one God in Whom is every power, from Whom all other powers are derived—so also, in the government of men and in the whole Church Militant, it must be that there is one fount that there is one head in which there is fullness of power... and in which there are both swords, for otherwise all power would not be in it. And from this fount all other powers are derived and to this fount all other powers are reduced.<sup>74</sup>

But the pope in governing the faithful, and in exercising jurisdiction in temporal matters, just as God in governing the world, does so “according to a two-fold law,” one “special” the other “common,” or one “absolute” the other “governed by rules” (*posse absolutum/regulatum*). Although of his absolute power, he says, “the Supreme Pontiff is a creature without bridle and without halter,” nevertheless, he himself chooses to regulate his own actions. Thus although he is above all positive laws, it is fitting that he should govern the church by his “regulated power,” that is, in accordance with “the common law,” so conducting “himself in spiritual matters that he *permits* the earthly powers to exercise their office in temporal ones.” In this he takes his example “from God Himself, Whose Vicar he is” and who “governs things in such a way that He allows them to pursue their own courses.”<sup>75</sup> With both God and the pope that is the case, at least “normally and ordinarily,” or “regularly and according to the common law” and “ordinary course of nature.” But in God and the pope alike there resides an absolute power (*potentia absoluta*) or plenitude of power (*plenitudo potestatis*) by which they can do directly and without the intermediary of any secondary agency (whether secondary natural causes or subordinate human agents) whatsoever they do indirectly by means of them.<sup>76</sup> Thus God can act beyond (*praeter*) the common laws of nature and perform a miracle—as he did when he delivered Mishach, Shadrach, and Abednego from the cruel flames of Nebuchadnezzar’s fiery furnace. Similarly, for some comparably special reason, the pope can act “beyond” the common laws he has established for governing the church and himself directly perform an action (e.g., the appointment of a bishop) that is normally the function of a secondary agent (e.g., election by a cathedral chapter). For “whatever he can do with other ecclesiastics he can do without them.”<sup>77</sup>



While recognizing that temporal things are de facto “subject to the immediate and executory jurisdiction of the material sword,” Aegidius’s overriding concern here is to vindicate the claim that the church and, therefore, the pope “always has a superior and primary jurisdiction directly over” them.<sup>78</sup> But as the example above reveals, his argument extends also to the internal government of the church conceived as a clerical or ecclesiastical body. Thus, by way of conclusion, it should be noted that with Aegidius, in this unlike Hostiensis,<sup>79</sup> there is no room for doubt about his commitment to the notion that lesser prelates wield the ecclesiastical power of jurisdiction by delegation from the pope. The fullness of power “which is in the Church is said to reside in the Supreme Pontiff.” Within the church he is the “fount” of all power; he is “like the sea which offers itself to fill all vessels,” “the sun, which sends forth the rays of its light to all creatures,” the “universal agent which allows all things and all secondary causes to act by their own motions.”<sup>80</sup> His it is to “order the whole Church in number, weight and measure.” From him all other prelates receive “ecclesiastical power by measure.” He, on the other hand, “because he has all the power which is in the Church, is said to have received the whole of ecclesiastical power without measure.”<sup>81</sup>

Proclaiming that Aegidius’s treatise is “one of the first importance in the history of political thought,” McIlwain once described it as “the completest and most thoroughgoing of all the theological and philosophical defences of the furthest doctrines of the canonists” to the effect that the pope is “supreme lord in his own right over all the world and in all matters temporal as well as spiritual.”<sup>82</sup> Certainly, in the view he expressed, at least in his *De ecclesiastica potestate*,<sup>83</sup> the power of temporal rulers, subordinate as they are to the pope and spiritual authority, reaches only so far as to touch “bodily things” (*res corporales*). Now deprived of the divinity that had once hedged kings, their proudly sacral nimbus had come to be dimmed, altogether outshone by the effulgence of the papal majesty, in status “the holiest and most spiritual of all.”<sup>84</sup> So far as royal sacrality is concerned, it has come now, with Aegidius, to be altogether engrossed and monopolized by the papal monarch himself. Against so powerful and theoretically based a case as the one Aegidius presents in this treatise, the legally inspired royalist propagandists had little to offer. Instead, the most powerful challenge and most influential response to such views came from fellow theologians who, while reacting sharply against the radically hierocratic position carved out by Aegidius or by his fellow Augustinian James of Viterbo (or, for that matter, by the Franciscan hierocrats who had preceded them),<sup>85</sup> rather than digging in at some opposite ideological extreme sought instead to identify and occupy a complex species of mediating ground. To these contrasuggestible theologians we must now turn.

## The Move to Mediating Ground: The Quaestio in

## utramque partem and John of Paris's Tractatus de regia potestate et papali

On the first, shorter, and less impressive of these two works—overshadowed by being coupled with (and partially absorbed into) John of Paris's more comprehensive and seminal treatise,<sup>86</sup> we need not dwell at any length. As its title suggests—*For and Against Pontifical Power: Both Sides of the Question Considered*—it takes like the *Rex pacificus* (though with a different upshot) the classical form of a scholastic question.<sup>87</sup> The issue the anonymous author addresses is, he says, “whether pontifical and imperial or royal dignity are two powers distinctly divided and separate, not dependent upon one another; and this is to ask whether the Supreme Pontiff has full jurisdiction and ordinary power in temporal matters.” And his conclusion? “That the powers are distinct and that the pope does not have lordship [*dominium*] of all temporalities.”<sup>88</sup> This conclusion the author claims to be able to prove by philosophical and theological arguments and by canon and civil law. But the philosophical argument not amounting to very much and his use of the civil law being slight, the burden of proof rests mainly on his theological arguments and his deployment of texts drawn from the canon law.

So far as the theological arguments go, they are largely scripturally based. Thus he makes a point of insisting that the negative view of kingship embedded in 1 Samuel 8—that is, that “the people seem to have asked for a king contrary to the Lord's will”—does not constitute a legitimate objection to the conviction that kingship “came about by the disposition of God, without whom nothing is made.”<sup>89</sup> And he understandably flourishes the testimony of the New Testament to the effect that Christ's kingdom was not of this world, that Christ himself refused to employ any temporal power, that he did not permit Peter, his first vicar, “or any of the others to have *dominium* of earthly things,” that in appointing Peter as his vicar and in “instituting the spiritual power” he gave him “the keys of the kingdom of heaven,” admittedly, but not any “*dominium* over matters earthly and temporal.” “How, then, [and] with what reason or authority, will His vicar claim the summit or title of royal dignity?” And how can Peter's successor claim to “have more power than Peter, the first vicar of Christ?”<sup>90</sup> There is nothing all that surprising about any of this, nor is there anything counterintuitive about the use he makes of the canon law. Thus he predictably refers to the decretals of Alexander III (*Si duobus*) and of Innocent III (*Novit, Licet, Per venerabilem*) that, hewing to precedent, had reflected a cautious and circumscribed view of the normal reach of papal power, and the “dualist” implications of which Aegidius Romanus had felt he had to blunt.<sup>91</sup>

Two things, however, should be noted about the author's use of those decretals. First, that although they often concern papal-imperial relations and do not have explicit reference to the kingdom of France, the author clearly views this as irrelevant. For “the king of France seems to be the emperor's

equal in terms of freedom of jurisdiction because the Franks held the empire before the kingdom of the Germans.” He is, indeed, “emperor in his own kingdom” and, as Innocent III’s *Per venerabilem* makes clear, “the king of France acknowledges no superior in temporal matters.”<sup>92</sup> Second, that the author is unable to evade the fact that the decretals he cites, so helpful to his cause in that they stop short of asserting a direct and universal papal power in matters temporal, make room nonetheless for an *indirect* and *occasional* right of papal intervention in such matters. Thus, while at the same time asserting that “the prince should not interfere in spiritual matters and that the pope should not ordinarily involve himself in temporal ones,” he admits, nonetheless, that the latter may still do precisely that “in special cases” or “incidentally and in special circumstances by reason of a connection with some spiritual cause.”<sup>93</sup>

In his *Tractatus de regia potestate et papali* (*On Royal and Papal Power*) this was a concession that John of Paris also made, and he did so in historically influential fashion. But if, as Leclercq and Dyson both suggest,<sup>94</sup> he consulted the *Quaestio in utramque partem* when writing his own treatise, he also moved well beyond what it had to say and into territory that was at once more complex and comprehensive and in some ways more radical. And following along the same trajectory, he came to rest in an ecclesiological stance that was altogether antipathetic to the papalist hierocrats whose views he was engaging.

The treatise appears to have been completed in the final months of 1302,<sup>95</sup> and it has been customary to treat it as an essentially moderate contribution to the great debate occasioned by the clash between Boniface VIII and Philip IV, a work that seeks complex mediating ground between royalist and papalist extremes on the disputed question of the proper relationship between *regnum* and *sacerdotium*.<sup>96</sup> But while borne along by the current of that approach, I should confess to feeling the countervailing tug of a palpable undertow of agnosticism. It is true that in 1303 John was to join some of his Dominican confrères in appending his signature to a royalist-inspired petition for the assembly of a general council to pass judgment on Boniface VIII. But the contemporary turmoil does not bulk large in the treatise itself. Boniface VIII is mentioned but once, and Philip IV not at all. Nor, despite assumptions commonly made to the contrary, is there any concrete evidence to the effect that John had actually read either the *De ecclesiastica potestate* of Aegidius Romanus or the *De regimine christiano* of James of Viterbo. He may not, in fact, have had the opportunity to do so. It is possible that both were being written contemporaneously with the writing (or, at least, the completion) of his own work.<sup>97</sup> While the manuscript tradition leaves no room for doubt about the fact that his own treatise had been released in 1302/3 as a single work, it strikes one, nevertheless, not so much as a coherent, single-issue tract as a loose assemblage of subtreatises addressing a series of quasi-distinct topics. More than a century ago Heinrich Finke took note of that fact,<sup>98</sup> and in

recent years, in an important series of powerfully argued essays, Janet Coleman has explored some of its implications. Thus, taking John's "Dominican" theory of property as lying at the heart of his whole literary effort, she has made a persuasive case for believing that the bulk of the treatise may well have been written *before* the clash between Boniface and Philip. She suggests 1297–98 as the probable date of composition but notes that even then he may have been drawing on identifiable arguments made by Franciscans and Dominicans some twenty years earlier in the context of the protracted debate between the two orders on matters pertaining to property and papal jurisdiction.<sup>99</sup> And she has argued further, though (I would judge) less persuasively, that while the primary focus of the treatise is "ostensibly" on the relationship between *regnum* and *sacerdotium*, its true driving force is John's specifically "Dominican" theory of property.<sup>100</sup>

To that latter theory, in its own right a matter of considerable historical significance,<sup>101</sup> I propose to return in the third and final volume of this series and as a prelude to a discussion of the notion of *dominium* as contingent on grace. In the *Tractatus de regia potestate et papali* that theory, however, can be seen to serve as a sort of preface to two other and perhaps more basic themes: "the right relationship of spiritual to temporal power and the right relationship of rulers to their subjects in church and state."<sup>102</sup> It is with those two themes, then, that I will be concerned here, and especially with the degree to which John stands out for having addressed all three of the issues that had surfaced during the Investiture Contest but had gone unmentioned in the Worms settlement. Not simply, that is to say, the *regnum-sacerdotium* issue but also, and perhaps rather, those questions pertaining to the internal constitution of the Roman church of pope and cardinals, as well as those larger questions concerning the internal constitution of the universal church itself that were to loom so large in the history of political thought as well as ecclesiology from the latter part of the fourteenth century on into the early modern period.

When one measures what he has to say against the positions elaborated by James of Viterbo and Aegidius Romanus what stands out as the fundamental differentiating move is his "emphatic rejection of the old medieval concept of Christendom as a unitary political-ecclesiastical society in which the state was somehow included within the church." And with that his further insistence that political society is not only distinct but also separate and possessed of "the autonomy of a society perfect and self-sufficient in its own right."<sup>103</sup> That, in contrast with James and Aegidius, is the conclusion he draws from the fundamental Aristotelian intuition that "man is by nature a political and civil animal" (*homo sit animal naturaliter politicum seu civile*) for whom it is "both necessary and advantageous to live in society and especially in such a society as a city or kingdom which is self-sufficient in everything that pertains to the whole of life." Government, accordingly, is grounded in natural law and the law of nations and is "more effective when conducted by one man

according to virtue” and “working for the common good.”<sup>104</sup>

So far as the temporal power is concerned, then, it is on kingship that he focuses, arguing that while it came into being contemporaneously with priesthood understood as “anticipatory” or “figurative” (by which he means the priesthood associated under the Old Law with the tribe of Levi), it predated “by a long time” the true priesthood which was to come into being only with Christ.<sup>105</sup> As neither natural and divine law nor “man’s natural tendencies” demand that there be a universal empire or a single supreme temporal monarchy for everyone, secular rulership betrays a diversity corresponding to the diversity of circumstances in which various peoples find themselves. Just as “they learn from natural instinct which comes from God, that they should live as citizens in society,” so too by that same natural instinct and “in order to live well together” they “choose the sort of rulers appropriate for the sort of community in question.”<sup>106</sup> If royal power is from God and the king a minister of God (even if, as Paul tells us, he is a tyrant),<sup>107</sup> it stems also from the people “who choose a king, either as an individual or as a member of a dynasty.” For “the people has the right to subject itself to whom it wills, without any previous decision of anyone else.”<sup>108</sup> John makes it clear that he does not view the anointing of kings as in any way necessary,<sup>109</sup> and notwithstanding the popular beliefs still current in his day, references to royal sacrality or to the royal possession of a mysterious curative power are, in his treatise, conspicuous only by their total absence. Indeed, in comparison with the spiritual power which is, he says, “verbal” (*verbalis*), it is in the very nature of the secular power to be physically coercive. But that does not mean, he adds (in response to the high papalist argument that “the corporeal is ruled by the spiritual and depends on it causatively”), that the royal power is merely “corporeal and not spiritual” or that “its charge is of bodies and not of souls.” For its purpose is the pursuit for its subjects of the common good, and that means enabling those subjects “to live according to virtue.”<sup>110</sup>

The type of virtue involved is, of course, “natural,” or “purely human,” or refers to the “acquired moral virtues” (*virtutes morales acquisitae*), and it pertains to man’s natural end in this life. But man is “ultimately ordered to a supernatural end, which is life eternal.” Were it possible to attain that higher end via the natural human virtues which it is the purpose of the political community to promote, the “directive function would [then] be the king’s.”<sup>111</sup> But it is not so possible. Instead, divine or supernatural virtue is called for. And if the leadership of humankind to the supernatural end of life eternal does indeed belong to a king, it is to Christ himself that it belongs—God and man, king and priest. To the faithful the salvific benefits of his sacrifice are mediated via the sacred remedies or sacraments which he himself instituted. Along with the sacraments enters onto the scene the divinely instituted priesthood which is charged with the task of administering them.<sup>112</sup> And since the scene in question is inevitably political as well as salvational, at the same

time there enters also the question of the relationship that in any Christian realm should properly prevail between *regnum* and *sacerdotium*.

On this central issue John is notably crisp. About the fact that priests, the divinely instituted “intermediaries between God and man” are ordered in hierarchical fashion under the supervision of bishops and archbishops, he has no doubt whatsoever. Nor does he question the fact that all of them, bishops and priests alike and with them the faithful at large, are by Christ’s explicit command ordered to “one supreme head, the Roman pope, successor of Peter.”<sup>113</sup> Nor, again, does he hesitate to affirm in wholly traditional fashion that the “sacerdotal power is greater than the royal and excels it in dignity, because... what is concerned with the final end is more complete and more worthy and gives direction to what is concerned with an inferior end.... Hence sacerdotal power [being concerned with nothing less than the enjoyment of God] is higher in dignity than royal power.”<sup>114</sup> All of this, John adds, is “generally conceded.” What is not conceded, however, is the notion that from superiority in dignity necessarily flows superiority “in every respect.” Hence he moves to erect obstacles of three types—methodological, theological, philosophical—to any attempt to draw from the premise of superiority in dignity the sort of sweeping conclusion so dear to papal hierocrats concerning the reach of ecclesiastical power in general and papal power in particular.

The methodological consideration in question comes to the fore in the way in which he handles the biblical texts so often flourished by the high papalists in their efforts to magnify the power of the pope, and especially so in matters temporal. Here his great effort, relying on the generally accepted tradition of exegesis stemming from church fathers like Augustine and Jerome, was “to prune away exegetical accretions [and] to restore texts, which had been pressed into hierocratic service, to their traditional meanings.”<sup>115</sup> Hence the determined effort he makes to keep on a very short leash hierocratic interpretations grounded in the imputation to scriptural texts of political allegories. Thus (a classic instance) the practice of taking the reference in Luke 23:38 to the “two swords” to mean the two powers, temporal and spiritual, and, with it, the tendency to attribute both swords to the pope. Similarly, the willingness to take the reference in Genesis 1:16 to God’s having made “two lights” to mean that the sun symbolizes the pope, whereas the moon, which reflects only an inferior light borrowed from the sun, symbolizes the emperor or king. And, with it, the inference that the temporal authority of those emperors and kings comes to them from the pope.<sup>116</sup>

Of the theological obstacles which John puts in the way of hierocratic claims it must suffice to mention but three. The first is Christological in nature. If Christ is, indeed, the true Melchisedech, king as well as priest, we should realize that it is as God not as man that he (like the Father) is king as creator over the entire creation. And that sort of authority has been conferred on no man, not even Peter. As man, Christ was not himself king—if by that

one means “king of a temporal kingdom, having direct and immediate authority in temporals.” And since “Christ as man had no *dominium* over temporalities” then no priest (not even Peter or his successor) “may claim to be Christ’s vicar in this, for Christ has not granted to anyone what he did not have himself.”<sup>117</sup> Christ’s kingdom not being of this world, John was at pains, and in the second place, to emphasize that the two powers, temporal and spiritual, are themselves distinct in nature one from another as well as being distinguished also “by the subject in which they are found.”<sup>118</sup> That being so, he concludes, and in the third place, that there can be no question of the temporal power’s being mediated to kings via the spiritual. “Just as the spiritual power derives immediately from God, so [too] does the temporal.” “In neither principles nor practices does the royal power come from the pope but from God and the people who choose a king.”<sup>119</sup> He bolsters this theological position with an argument more broadly philosophical in nature. Namely, that there is no necessary deduction from superiority in the order of dignity to superiority in the order of causality. There is no reason to conclude, that is to say, that the power which is inferior in the order of dignity necessarily has its origins in the power which is superior in that same order. Thus, to be quite specific (and he is), there is no reason to conclude that the secular power by virtue of being inferior in dignity to the spiritual is, therefore, “contained within the spiritual power and... established by it.”<sup>120</sup>

Such barriers to the sweeping claims of the hierocrats being thus firmly in place, John is now well positioned to draw his own opposed conclusions. Noting wryly of the papalists that “these doctors who so widely extend the pope’s authority, are speaking in fear or favour of the pope,”<sup>121</sup> he flatly rejects any attribution to the papacy of a direct power in temporals. Scripture, after all, is “the rule of faith,” and “there is nothing in Scripture... to say that the pope has both swords [temporal as well as spiritual].” “None of the power which Christ gives to bishops and priests confers any direct temporal power or jurisdiction, except that clergy may accept what is necessary for support of life.”<sup>122</sup> Christ as man was not “king of a temporal kingdom, having direct and immediate authority in temporalities,” and “no priest at all may claim to be Christ’s vicar in this, for Christ has not granted to anyone what he did not have himself.”<sup>123</sup> So far as ecclesiastical property in particular is concerned, it must be understood as given not to individuals but to the ecclesiastical community itself, which alone has “proprietary right and lordship” (*proprietas et dominium*) over it. The pope, certainly, even “as head and supreme member of the universal church” possesses no such right—nothing more, in effect, than a managerial power or “general stewardship” over such goods. And over the property of lay folk which belongs not to the community as a whole but to the individual who has acquired it through his own “skill, labour and diligence,” the pope lacks even that sort of overall supervisory power.<sup>124</sup>

As was the case with the author of the *Quaestio in utramque partem*, John also admits, however, one very important qualification to the degree of



separation he inserts between the respective spheres of the spiritual and temporal authorities. If he was adamant in his insistence that the papacy was possessed of no *direct* authority in matters temporal, he was also forthright in conceding that in extraordinary cases, via his authority to preach or impose excommunication, the pope might intervene in matters temporal in an “indirect,” “incidental,” or “conditional” way, even to the point of persuading a king’s subjects to deprive him of his high office. It is true that he similarly placed in the hands of secular rulers, should a pope prove to be “an incorrigible criminal, a cause of scandal for the church,” a parallel power of incidental intrusion into the spiritual arena by “indirectly” bringing about the pope’s excommunication and deposition.<sup>125</sup> But it was the former argument for an indirect papal power in temporals that was destined to have a truly enduring history. It was to be echoed in the fourteenth and fifteenth centuries by theologians of stature like Pierre d’Ailly and Jean Gerson, and in connection with it John’s name was to be evoked in laudatory fashion by none other than Robert, Cardinal Bellarmine in the sixteenth century and by John Courtney Murray in the twentieth.<sup>126</sup>

So far, however, as the impact of his views on later thinkers goes, it is what John had to say on the second of the two major themes he addresses in the *Tractatus de regia potestate et papali* that possesses the greater significance. That theme concerned the relationship that should properly exist between rulers and their subjects, and that significance hinges less on what he had to say about temporal rulers—kings and their subjects—than upon his lengthier and far more probing discussion of the relation of pope to universal church. About the former John has in fact very little to say, and then indirectly, as, for example, when he refers to the role of the Frankish “barons” in the deposition of Childerich, last of the Merovingian kings, in 751, or to the power of “the people” to depose a king who has proved to be “an incorrigible heretic.”<sup>127</sup> Or again, when evoking Aristotle’s praise for the mixed form of constitutions which embraces aristocratic and democratic elements as well as monarchical, and borrowing an argument advanced already by Aquinas, he says that that was the form of balanced constitution God had first bestowed upon the Israelites, a constitution (he says) that was “better” or “more beneficial” for them than the regal constitution for which they later petitioned and which, according to 1 Samuel 8:18, God had not conceded to them without displeasure. For if “a regal constitution is best in itself,” it is so in practice only if “the man who is given power has perfect virtue” and does not permit himself to be corrupted by the very magnitude of his royal power and lapse into tyranny.<sup>128</sup>

Certainly, he says, moving swiftly now from the constitution of the temporal kingdom to that of the universal church, such a mixed constitution “would... be the best constitution for the Church if under the one pope, many were chosen by and from each province, so that all would participate in some way in the government of the Church.”<sup>129</sup> A century later, in a statement

delivered at the Council of Constance, the prominent French theologian Pierre d'Ailly, using without acknowledgment the words just cited, added of the men John had envisaged as being chosen by and from each ecclesiastical province that "such men should be cardinals who, with the pope and under him, might rule the church and temper the use of the [pope's] *plenitudo potestatis*." <sup>130</sup> That addition reflected d'Ailly's increasing inclination in the years after 1411 (when he himself joined its ranks) to attribute to the College of Cardinals a quasi-oligarchic role in the governance of the universal church. John, in advocating the desirability of a form of mixed monarchy as the best constitution for the church, had stopped short of identifying the cardinals with the aristocratic component of that ideal constitution. But that he might have found d'Ailly's addition a congenial one is something more than a matter of free-floating speculation. In the course of his treatise he repeatedly ascribes to the cardinals a representative role; they stand, he says, "in place of the whole clergy," or "of the whole people," or, indeed, "of the church" or "the whole church." <sup>131</sup> And he concludes, further, that the College of Cardinals, as "the body whose consent in place of the whole church, makes a pope," could equally act in place of the whole clergy and people in accepting his abdication or even in proceeding to depose him should he be guilty of heresy or serious wrongdoing or simply prove himself to be "wholly useless." <sup>132</sup> All of that said, John makes it clear, citing the authority of the canon law, that on a matter as serious as the deposition of a pope the "more appropriate" constitutional vehicle would be a general council of the entire church. <sup>133</sup>

This last emphasis proved to be a most significant one. Of necessity, it led him to probe the intricacies of the church's internal government, in so doing bringing into a novel and powerful configuration a body of constitutional doctrines hammered out by the canonists during the preceding century. Thus he delineated in clear and forthright fashion the practical consequences of applying such doctrines to the papacy itself and produced, as a result, "by far the most consistent and complete formulation of conciliar doctrine before the outbreak of the Great Schism" in 1378. <sup>134</sup> In arriving at that outcome, the crucial moves he made were two in number. First, he brought together in fruitful combination the theories already elaborated by the decretalists concerning the governance of corporate groups within the church with the older decretist emphasis on the continuing authority that resided in the *congregatio fidelium*, the universal church taken as a whole. Second, and accordingly, he applied to that universal church and its papal head decretalist doctrines developed in relation to such subordinate corporate bodies within the church as cathedral chapters and collegiate churches. In various glosses, the decretalist Hostiensis had already made some tentative moves in that same direction. But there was nothing at all tentative about the way in which John handled the matter. Nor was it unimportant for future developments that he was making his own case in a work of publicistic literature far removed in time and style from the somewhat occluded and technical discourse of the

legal commentaries.

If each diocese possesses an ordered or corporate unity with one bishop serving as its head, so too, he insists, does “the whole church and Christian people as a whole” constitute its own corporate unity with the pope himself as its “one supreme head.”<sup>135</sup> If the bishop in any cathedral church has no “proprietary right and lordship [*dominium*] over ecclesiastical property” (for it belongs to the community not to individual people), but only a power of “general administration and dispensation,” similarly the pope himself vis-à-vis the property owned by the universal church. Here, basically reiterating the position at which the canonists had long since arrived, John insisted that the pope is no more than “general steward of all ecclesiastical goods.” While the bishop or abbot is “the particular or immediate steward” of such goods, the pope in turn is “not sole lord” but simply “the general steward” and the “true proprietary right” rests accordingly “with the community.” Should he “betray his trust” and take “the property of churches for reasons other than the common good,” the pope, then, no less than a bishop or abbot who acts in a similarly illegal fashion, is subject to judgment, to correction, and, if obdurate, to deposition.<sup>136</sup>

Echoing a sixth-century forgery, Gratian’s *Decretum* had affirmed that the pope could be judged by no one but had appended the important qualification “unless he is caught deviating from the faith.” Some of the decretalists had extended that qualification concerning papal heresy to embrace also the possibility of trial and deposition for schism, “persistence in notorious crimes,” dissipation or misappropriation of ecclesiastical property, and eventually, indeed, “any conduct prejudicial to the welfare of the whole Church.”<sup>137</sup> They had not been as certain about the idea that the power of the whole church to stand in judgment over an errant pope was to be exercised by a general council representing that church. But, citing Gratian’s crucial text and affiliated glosses, John himself betrayed no comparable lack of certainty on the matter and his treatise served, in effect, to mainstream that notion.<sup>138</sup>

In that treatise he acknowledged the fact that against his position the papalists would be inclined to raise a series of objections. Two of these he singled out as fundamental and calling for immediate refutation. First, the papalists were likely to say that as the papacy is from God alone, no human authority (not even that of a pope himself who wished to abdicate) could take it away. To which John replied by evoking the traditional juristic distinction between the papal office itself, which does indeed come from God alone, and the person who fills it and whose entry into the office “comes through human cooperation [with God] by way of the agreement of the man elected and [the consent of] the electors.” For in all of this, he says, we humans are *cooperatores dei*. Thus while it is an immutable rule of divine law that the pope is above everyone, “whether or not this or that individual is pope is changeable, because the consent of the elect and electors cooperates in

deciding on the choice of person.”<sup>139</sup> Second, the papalists were also likely to say that “just as his priesthood cannot be taken away from a priest, so the high priesthood cannot be taken away from the chief priest.” But that, John responded, evoking the canonistic distinction which had by now become traditional,<sup>140</sup> would be to confuse the priestly “power of order” (*potestas ordinis*), which imprints on the priest an indelible character that no human agency can take away, with the “power of jurisdiction” (*potestas jurisdictionis*), which “is conferred by consent of men... and can be taken away by consent.” It is not the nature of his priestly orders that distinguishes the pope; in that respect he is but a bishop like other bishops. What distinguishes him from his fellow bishops, instead, is the nature of the jurisdictional power conferred upon him. In effect, “since the papacy and high priesthood add nothing except jurisdiction,” it is “not necessary for his office to be perpetual.” Jurisdiction, not being “supernatural and outside the ordinary operations of human affairs,” can be relinquished (as is the case when a pope abdicates) or taken away (as is the case if he is deposed).<sup>141</sup>

Given the degree to which interest in the *Tractatus de regia potestate et papali* has traditionally focused on what it has to say about the relationship between the temporal and spiritual powers, “there has been a tendency,” Tierney once remarked, “to neglect the really radical implications of his theories on the internal government of the Church.” But one can see in retrospect that by treating “with equal emphasis the problems of Church and State and the internal problems of Church government,” the treatise marked something of a

turning point in the development of ecclesiological theory. Until the end of the thirteenth century interest had been mainly centered upon defining the relations between the spiritual and temporal hierarchies; henceforth it was to be the problems of authority within the Church, the interrelationship of Pope, cardinals and General Council, which more and more engaged the attention of the most influential thinkers of the age.<sup>142</sup>

To that conclusion, looking ahead now to the third and final volume in this series, we need only add that the church being conceptualized increasingly as an “ecclesiastical polity” (*politia ecclesiastica*), a political community similar in crucial respects to other political communities,<sup>143</sup> a turning point in the development of ecclesiological theory meant, almost inevitably, a turning point also in the history of political thought. And from the fifteenth to the seventeenth centuries, European political thinking was indeed to prove itself to be profoundly responsive to arguments hammered out originally in relation to the internal constitution of the universal church.

# Epilogue

**LOOKING BACK NOW** across the two and a half centuries on which we have been focusing in this volume, it is clear that so far as the history of European political thinking is concerned, these were centuries linked together by some very important continuities. If in the mid-eleventh century kingship was the primary institutional focus of political thinking, it is notable (and especially so if one includes the papal monarchy) that that was still the case in the early fourteenth century. And beleaguered though it had come to be at the theoretical level, we have seen that at the popular level the hallowed and almost instinctive conviction that there was something sacred about even the temporal monarchs of Europe continued to betray a remarkable resilience. But such continuities notwithstanding, it is also clear that an enormous theoretical gulf had come to yawn between the theopolitical commonsense of the mid-eleventh century when the German king Henry III, acting as sacred emperor-pontiff and imperial vicar of Christ, could make and unmake popes, and that of the early fourteenth century when papal ideologists like Aegidius Romanus and James of Viterbo could portray kings and emperors as essentially secular figures, nothing other than lay folk possessed of a purely temporal power over the merely corporeal and directly subject, even in matters temporal, the arena within which their authority was strictly confined, to the higher authority of the *sacerdotium*. By their day the line between the sacred and profane had come to be far more sharply drawn than at any time during the earlier Middle Ages, with the realm of the sacred now monopolized by the priesthood and the sacrality of kingship now largely confined by the ecclesiastical authority at least to a papal monarchy which had long since adopted for itself the role, status, attributes, and prerogatives of the sacral monarchs of old.

But if little room for doubt was left about the firmness of the line to be drawn between the sacred and profane, we should not miss the fact that some uncertainty persisted about *where* exactly that line should properly run. The Gregorian reformers and their immediate successors had been content to insist that it was a line that sharply divided what they had come to perceive as quite distinct orders, the clerical and the lay. But the recovery of familiarity with the richnesses of Aristotelian political thinking, the revival of Roman law, the creative and intricately vital development of the canon law, the constantly evolving political and ecclesiastical conditions of the day—all of these served to complicate and enrich the way in which twelfth- and thirteenth-century intellectuals thought about matters political and ecclesiastical. Old assumptions were called into question, established verities were destabilized, and there was a tendency to nudge the line between the supernatural and

natural in a direction affording more room and free play for the natural. And here I would suggest, by way of conclusion, that John of Paris's framing of the issues as he sought to demonstrate the legitimacy of a general council's moving to depose an errant pope affords an important measure of illumination. He was altogether traditional, of course, in his insistence on the pope's supreme headship of the church and on the explicitly divine institution of that headship. Nor was there anything at all unprecedented about his choosing to appropriate for his own purposes the by now standard canonistic distinction between *potestas ordinis* and *potestas jurisdictionis*. Nor, for that matter, was he introducing any unheard of novelty when he pointed out that it was not the nature of his priesthood but the nature of the jurisdictional power he wielded that distinguished the pope from his fellow bishops. But there was, I would suggest, something noteworthy about the precise manner in which he appropriated the distinction between power of order and power of jurisdiction. Arguing against the papalists, he forthrightly conceded that no priest could be deprived of the priesthood because it was conferred by the power of order which is "above nature and the ordinary condition of things." But that is not true of the power of jurisdiction which is "not supernatural and outside the ordinary operations of human affairs." That "some men should have jurisdiction over others" clearly falls within "the ordinary condition of men." Even if we are talking about ecclesiastics, it is, in fact, and "in a certain way *natural*." And it is no less natural that jurisdiction, being "conferred by consent of men," can likewise "be taken away by consent [of men]."<sup>1</sup>

Here, then, so far as the power of jurisdiction in general is concerned, and the power of the pope in particular, the emphasis has subtly been shifted from supernatural to natural, from the action of God to that of his earthly cooperators, from divine authorization to human consent. The critical line between sacred and profane has in effect been moved from that separating clergy from laity to that separating divinely instituted ecclesiastical office from humanly conferred incumbency. Beyond that, indeed, it has been so positioned that it now runs right through the heart of the ecclesiastical office itself, dividing the latter's jurisdictional from its sacramental aspects. Like James of Viterbo, John of Paris appears to have seen no essential difference between the jurisdictional or governmental power (*potestas jurisdictionis in foro externo*) wielded by ecclesiastical officeholders and that wielded by secular rulers. But whereas James viewed both as at once royal and sacral in nature in that they stemmed ultimately from the kingship of Christ, John sees both as falling within the realm of natural causality wherein the power of the community holds sway. That realm, accordingly, is now enlarged in such a way as to blur, in some critical respects, the distinction between political and ecclesiological and positively to invite the deployment of ecclesiological arguments in the arena of secular political thinking.<sup>2</sup>

If, by way of conclusion, we look forward now to such later developments, it would not be fanciful, I believe, to trace to this shift in the borderline

between sacred and profane signaled by John of Paris in the course of his proto-conciliarist argument the real beginnings of the tradition of ecclesiological and political thinking that was to find expression a century later in the dramatic deposition of popes at the Councils of Pisa (1409) and Constance (1414–18) and was later to be evoked by Protestant resistance theorists in sixteenth-century Scotland and France, by disgruntled parliamentarians in seventeenth-century England, and by “judicial Jansenists,” “patriot constitutionalists” and pre-revolutionary pamphleteers alike in eighteenth-century France. And it was evoked to make the point that just as the ultimate authority in the church resided in the body of the faithful, so too did sovereignty reside in the body of the kingdom, and that the power which the king exercised, being power delegated to him by that kingdom, was both limited in nature and if need be revocable.<sup>3</sup> Writing from bitter exile during Mary Tudor’s Catholic restoration in England, John Ponet, formerly Edward VI’s bishop of Winchester, referring to the conciliar experience of the previous century and to the “lawe of nature to depose and punish wicked governours” which “hath not only been received and exercised in political matters but also in the church,” was moved boldly to proclaim that “by this lawe [of nature] and arguments of the Canonistes and example of deprivation of a Pope are all clokes (wherewith Popes, Bishoppes, priests, Kaisers and Kings use to defend their iniquitie) utterly taken away.”<sup>4</sup> By this time, it seems, the “new wine of Christianity” with which Hobbes’s “old empty bottles of Gentilism” had long ago been filled was now, as he was to claim, beginning at last to break them.



# Notes

## General Introduction

1. We are already fortunate enough, after all, to have available to us in English an impressive array of histories of medieval political thought, from the classic, multivolume work of the Carlyles, 1903–36, via the shorter accounts by McIlwain, 1932, Morrall, 1958, Ullmann, 1965, Monahan, 1987 and 1994, and Canning, 1996, to the lengthy *Cambridge History of Medieval Political Thought*, 1988, an impressively scholarly collective effort. For these titles see the bibliography, “General Accounts.”
2. Thus, in order of citation (all italics mine), Sabine, 1937, 159; Dvornik, 1966, 2:488; Morris, 1967, 166; McIlwain, 1932, 146; Morrall, 1958, 10–11. Cf. among more recent works, Canning, 1996, 127–28.
3. Notably Ullmann, 1961, 1965, 1966a, 1969. For an extended analysis of his position, see Oakley, 1973, 3–48; reprinted in Oakley, 1999, 25–72.
4. Affirmed by John Stuart Mill in a classic statement that Gertrude Himmelfarb has described as “the very epigraph of modernity”: “Over himself, over his own body and mind, the individual is sovereign.” Mill, 1985, 69. Himmelfarb’s characterization is to be found in the introduction to this edition at 29.
5. He did so, adding: “It is not surprising that we go back to that period every time we ask ourselves about our origins.” Eco, 1986, 64–65.
6. Thus Bynum, 1982, 31. For the “mythology of prolepsis,” see Skinner, 1969, 22–24; reprinted in Tully, 1988, 44–45.
7. Skinner, “A Reply to My Critics,” 1988, in Tully, 1988, 231–88 (at 248). Cf. Dunn, 1969, 208, where, speaking very much to the point at issue here, he says, “To present a complex argument from the past in terms of its significance for us may often seem mendacious, and to present it with the greatest concern for historical specificity but without exploring its ‘significance’ is likely to seem trivial.”
8. For a further statement of my views on the matter, see Oakley, 2006b, 407–22. There I place a particular emphasis on the importance of the distinction between *meaning* and *significance* which the literary theorist E. D. Hirsch (following in this the promptings of Gottlob Frege and Edmund Husserl) deployed in an attempt to dissipate the confusion that so often surrounds argument concerning the interpretation of texts. For my own evolving stance vis-à-vis the broader metahistorical debate concerning textual interpretation at large and the interpretative mode appropriate to the pursuit

of the history of ideas, I venture to refer to Oakley, 1984, 11–40, and Oakley, 1999, 1–24, 333–41.

9. Skinner, “Meaning and Understanding in the History of Ideas” (1969), in Tully, 1988, 44–45.
10. Thus Bloch, 1964, 1:107: “In a world where hitherto the sacred and profane had been almost inextricably mingled, the Gregorian reform proclaimed both the unique character and the supreme importance of the spiritual mission with which the Church was entrusted; it strove to set the priest apart from and above the ordinary believer.”
11. Thus Brown, 1982, 305–6, where he speaks further of the late twelfth and early thirteenth centuries as having seen “a brittle but unanswerable assertion of purely secular values” and “political power increasingly wielded without religious trappings.”

## Prologue

1. On which, see Thompson, 2005.
2. For which, see Black, 1984. He comments (30) that “it was to a large extent in the guilds that fraternity, consent and the like were imprinted upon the minds of town dwellers.” Cf. p. 53 where he adds that “counsel, consent and election were the procedural values most commonly involved in the towns.”
3. For the paradigmatic rise to prominence of the great university at Paris, see Ferruolo, 1985. For the universities in general, see Cobban, 1988, and, for their significance, see below, ch. 3.
4. Black, 1984, 81–82, comments that “rather than [to] city, *universitas* or guild,” it was “to the kingdom” and, for Aristotelians, “to the *civitas* or state in the abstract” that learned authors were prone to ascribing moral value. So far as “the political role of the guilds” is concerned, “one’s first reaction is how little they [i.e., “scholastics and jurists”] had to say on the subject.”
5. On which, see Lambrech, 1988, 283–91. For ninth-century examples of the genre by Sedulius Scottus, Jonas of Orléans, Smaragdus, and Hincmar of Rheims, see Oakley, 2010, ch. 5.
6. Studied classically by Berges, 1938, and then much ignored, the genre has of recent years attracted renewed attention and appreciation. It has been portrayed as less conventional or stereotypical in content, more responsive to changing historical conditions, and susceptible even of being used as a vehicle for criticism of rulers. See Guenée, 1971, 137–42; Krynen, 1993, esp. 52–71; Ferster, 1996, esp. 1–14; and the essays collected in Bejczy and Nederman, eds., 2007.
7. See below, ch. 5.
8. Though it is impossible to be certain about it, Aegidius Romanus may have

written his *De regimine principum* by way of counsel to the young Philip IV of France (1288–1314).

9. Text in *MGH: Constitutiones et Acta*, tom. 4, pars 1:139. Cf. Rivière, 1926, 320n13, and Woolf, 1913, 312–15.
10. Thus McIlwain, 1932, 268, where he adds that “it would be difficult, indeed, to overstate... [the maxim’s importance] in the history of western political thought.”
11. Oakley, 2003b, 217–63.
12. Thus in 1788–89 the “patriot constitutionalists” and “judicial Jansenists” of France could draw upon the analogy of the assembly without papal convocation of the general council of Pisa in 1409 in order to justify the assembly of the Estates General in the absence of a royal summons and even in defiance of the royal will. For which, see Oakley, 2003b, 243–49, and Kley, 1996, 105–203.
13. McIlwain, 1932, 146–47.
14. Mirbt, 1894, 4–95 (esp. 81–95 for a chronology and classification by nation and party of the various contributors to the controversialist literature).

## Chapter 1. Historical Orientation

1. Southern, 1961, 12–13.
2. Moore, 2000.
3. J. C. Russell, “Population in Europe, 500–1500,” in Cipolla, ed., 1971–76, 1:25–70 (at 36–41).
4. Testimony to success in this “agrarian revolution” is the fact that whereas there were no less than twenty-six general famines in the Francia of the eleventh century, there were only two in the twelfth and none at all in the thirteenth. See Moore, 2000, 40.

## Chapter 2. The Christian Commonwealth (i)

*Liber Bonithonis ad Amicum* in *MGH: Libelli de Lite*, 1:568–620; I cite the translation in Duncalf and Krey, eds., 1912, 84–85.

1. See Ross, 1998.
2. Cowdrey, 1998, 158–67.
3. That sobriety was strikingly evinced by Gerd Tellenbach, author of a classic and highly influential work on the subject published in 1936, when he returned to the issues involved some fifty years later. See Tellenbach, 1988 (English translation, 1993). Cf. Tellenbach, 1936 and 1948. For extended bibliographical data, see Blumenthal, 1988, and Cowdrey, 1998, 699–736. Cowdrey’s fine book is the first comprehensive biography of Gregory VII published in any language for more than half a century.

4. Brooke, 1939, 4: “Down to the death of Henry IV in 1106,” he says, “it should be obvious that the struggle is not about investitures at all.”
5. Cowdrey, 1998, 546–50.
6. Schieffer, 1981. But, for a sharply opposed take on the evidence, see the review by Kempf, 1982, 409–14.
7. Tellenbach, 1993, 178.
8. See Oakley, 2010, ch. 9, and above ch. 1.
9. Oakley, 2003b, 1–19.
10. For this extension of the concept, see Fuhrmann, 1989, 134n34.
11. Tellenbach, 1993, 188.
12. For which, see Oakley, 2010, ch. 9.
13. Migne, ed., *Patrologia cursus completus: Series Latina* (hereafter *PL*) 143:765n32: “Quod nemo negat nisi qui evidenter haec ipsa verba veritatis impugnat quia sicut cardine totum regitur ostium ita Petro et successoribus ejus totius ecclesiae disponitur emolumentum. Et sicut cardo immobilis permanens ducit et reducit ostium, sic Petrus et sui successores liberum de omni ecclesia habent iudicium cum nemo debeat eorum dimovere statum, quia summa sedes a nemine iudicatur.” Cf. Ullmann, 1962, 321; Morrison, 1969, 285–86.
14. See Carlyle and Carlyle, 1903–36, 4:46 and 168–69, where they comment ruefully on the interpretative difficulties which some of Damiani’s texts present to the reader.
15. See Oakley, 2010, ch. 9.
16. See, in order of citation: Damiani, *Opuscula* 20:1, *PL* 145:44; *ibid.*, 17:14, *PL* 145:386. Cf. *Epp.* 1:5, *PL* 144:210; *Opusc.* 23:4, *PL* 145:474; *ibid.*, 23:1, *PL* 145:455.
17. Cf. *Epp.* 1:20, *PL* 144:238D; *Opusc.* 31: 7, *PL* 145:540B. Damiani was the first to draw this particular analogy which was later to become something of a cliché. See Alberigo, 1969, 36–42.
18. Following here Damiani’s eulogy to Henry III—*MGH: Libelli de Lite*, 1:71. Cf. the notion of the king as the minister of God in his letter to Henry IV, *PL* 144:440–42.
19. *Opusc.* 16:1, *PL* 144:440; trans. Tierney, 1964, 38.
20. *Opusc.* 5:9, *PL* 145:89; *Disceptatio synodalis*, *MGH: Libelli de Lite*, 1:78, where he writes: “solus ille fundavit et super petrum fidei mox nascentis erexit [Matt. 16], qui beato vitae aeternae clavigero terreni simul et coelestis imperii iura commisit.” Carlyle and Carlyle, 1903–36, 4:46, comment: “It seems to us, from an examination of his whole works, extremely improbable that he meant to assert [here] the supremacy of the Spiritual power over the Temporal in temporal matters.”
21. See Oakley, 2010, ch. 9.

22. What was involved in this was a blurring of the crucial distinction the Romans had made and that we ourselves now make between the holding of office and the ownership of property, with churches being conceived as pieces of real property, to be bought, sold, inherited, or granted out as fiefs. For a brief comment on the significance and long-term consequences of this development, see Oakley, 1979, 30–31, and the literature there referred to. Cf. the extensive discussion of the issue in Tellenbach, 1993.
23. Ullmann, 1972, 143, 153, 171.
24. Tellenbach, 1993, 78.
25. On which, see Tellenbach, 1948, 91, 99.
26. Tellenbach, 1993, 176, 288, 291–93, 339–40.
27. Tellenbach, 1948, 87.
28. See Tellenbach, 1993, 176; Tellenbach, 1948, 103–4.
29. For the text of the decree, see Gratian's *Decretum*, D. 23, c. 1, ed. Friedberg, 1879–81, 1:77–79; English translation conveniently available in Tierney, 1964, 42, where he renders the “gesture” in question as follows: “saving the honor and reverence due to our beloved son Henry who is now king and who, it is hoped, will in future become emperor with God’s grace, according as we have now conceded this to him and to his successors *who shall personally obtain this right from the apostolic see*” (italics mine).
30. No. 384: *Nicolai II Synodica generalis*; in *MGH: Constitutiones et Acta*, 1:547, cap. 6: “Ut per laicos nullo modo quilibet clericus aut presbyter obtineat aecclesiam nec gratis nec precio.” Trans. Tierney, 1964, 45–46, No. 6.
31. See Schieffer, 1981, 48–84; cf. Kempf, 1982, 409–15, who takes exception to Schieffer’s attempt to minimize the significance of the canon.
32. That edginess and the intransigence that went with it had contributed in 1054, when he was serving as papal legate to Constantinople, to the outbreak of the stubborn schism between the Latin and Greek churches that proved over subsequent centuries impossible to heal.
33. For the fourth- and fifth-century Donatists and the position they espoused, see Oakley, 1979, 159–61.
34. Humbert, *Adversus simoniacos*, 3:30 and 32; *MGH: Libelli de Lite*, 1:236–37, 239–40. For Peter Damiani’s opposing position, see his *Liber Gratissimus*, 6, 24; cf. *ibid.*, 23–24 and 52–53.
35. Tellenbach, 1948, 109. Cf. Ullmann, 1970, 266: “Lay ideology as such is made the chief target of Humbert’s constructive criticism.”
36. Humbert, *Adversus simoniacos*, 3:21; *MGH: Libelli de Lite*, 1:225.
37. *Ibid.*, 3:9; *MGH: Libelli de Lite*, 1:208: “Ideo laici sunt tantum, id est saecularia, clerici autem sua tantum, id est ecclesiastica negotia, disponant et provideant.” Cf. *ibid.*, 3:7, *MGH: libelli de Lite*, 1:206, where he deplores the intermingling of *saecularia*, and *ecclesiastica* that occurred

“from Ottonian times up to that... of Henry [III].”

38. *Adversus simoniacos*, 3:6; *MGH: Libelli de Lite*, 205–6.

39. *Ibid.* (I cite the translation in Tierney, 1964, 40. Italics mine.) Tellenbach, 1993, 170, makes the pertinent comment that “since... investiture by the ruler in the case of bishops... [was] more important in practice than the purely ecclesiastical act which followed, the boundaries between ordination and consecration on the one hand and installation or investiture on the other had tended to become blurred.”

40. Thus Abbo of Fleury, cited by Tellenbach, 1993, 170.

41. Tellenbach, 1948, 114. “The laity,” he adds, “were not permitted to rule them, and any attempt to do so counted as a usurpation of spiritual power.” For an early affirmation of this position, see the letter of the monk Wido to the archbishop of Milan (ca. 1037), in *MGH: Libelli de Lite*, 1:6. Cited by Tellenbach, 1993, 171. Cf. Tierney, 1964, 34–35, where he comments that “to the early reformers it seemed just as obvious as it did to the emperors themselves that all the lands, rights, jurisdictions, and duties of a bishopric formed one, indissoluble juridical entity.... They therefore maintained that in the ceremony of investiture with ring and staff, the whole ‘episcopate’ was conferred, an indissoluble union of spiritual office and temporal endowments.”

42. Analogous considerations also weighed heavily on the minds of the national monarchs of Europe, notably the kings of England and France. They, too, became embroiled in the Investiture Contest, though the central and most dramatic struggle was the one that took place in Italy and Germany between pope and emperor.

43. Thus Schieffer, 1981, 207: “Schon die Tatsache dass die konfliktträchtigen Theorien des Kardinals [Humbert] zwanzig Jahre hindurch toter Buchstabe bleiben, deutet an, dass dem Weg zum Investiturverbot durchaus keine automatische Zwangsläufigkeit anhaftete.” Cf. Tellenbach, 1993, 183–84.

44. Tellenbach, 1993, 184. Cf. Cowdrey, 1998, 546–50.

45. It is true that no text has survived of the decree or decrees issued at the Lenten Synod of 1075 and prohibiting kings and all laypeople from practicing investiture and “from thereafter having any right in giving bishoprics.” If we know about such a decree, it is on the sole authority of the Milanese chronicler Arnulf. It is also true that the decree may not have taken the form of a watertight command but have left some room for a measure of negotiation. On which, see Cowdrey, 1998, 100–110. But that some such decree or decrees emanated from that Lenten Synod seems clear, and “there is evidence in Gregory’s letters that the Lenten Synod of 1075 saw the beginning of his regarding lay investiture as in itself an intrinsically unwarrantable intrusion of laymen in the process of ecclesiastical appointment.” Thus Cowdrey, 1998, 547.

46. Cowdrey, 1998, 548. For the text of the 1075 decrees and those of 1080, see

- Gregory's *Register*, VI, 5b, 3, and VII, 14a, 1 and 2; ed. Caspar, 1955, 2:403, 480–81.
47. Russell, 1968, 118. Similarly, Morrall, 1958, 29.
48. This being the final judgment on Gregory's place in papal history ventured by Cowdrey, 1998, 697.
49. Tellenbach, 1948, 184; 12–24. Cf. Cowdrey, 1998, 539, where he speaks of that liberty as consisting in an “unfettered and unqualified subjection to the leadership of Christ the Redeemer.”
50. For the older state of affairs, see Oakley, 2010, 200–203; and, for the fourfold superiority of the clergy over the laity, Cowdrey, 1998, 616.
51. Tellenbach, 1993, 245.
52. Cited from Morrison, 1969, 275.
53. *Register* VIII, 21; ed. Caspar, 1955, 2:544–62 at 555. English translation in Tierney, 1964, 70.
54. *Register* IV, 2; VIII, 21, ed. Caspar, 1955, 1:295, 2:535–36.
55. For the latter, see Oakley, 2010, ch. 9.
56. Cowdrey, 1998, 495; cf. 526, where he notes that “by hereditary right... [Gregory] seems in the light of contemporary liturgical usage to have understood the consequent devolution not by linear succession amongst men but by direct divine endowment, upon whoever should succeed to Peter's throne of the rights, duties, and burdens that arose from Christ's commission to Peter.” For the pertinent texts of Gregory, see *Register* IX, 3 and 35; ed. Caspar, 1955, 2:575–76, 623, where he says: “Ex quo tempore principatur ille et potestas per beatum P. successit omnibus suam cathedram suscipientibus vel usque in finem mundi suscepturis divino privilegio et jure hereditario.”
57. Robinson, 1988, 220; Oakley, 2010, 208.
58. Robinson, 1988, 254. Cf. *Register* IV, 16 and IX, 29; ed. Caspar, 1955, 1:320–21, 2:613.
59. Morrison, 1969, 78, 109–10, 353, in which latter place he comments that “by and large, the emphasis in Western thought moved away from tradition, the idea of anciently transmitted authority, and toward a concept of administrative power.” He also notes (274) that so far as the church's ancient order was concerned, “the antiquity of Roman discretionary powers was, in the last analysis, the only rule of antiquity which the reformers unreservedly accepted.”
60. Fuhrmann, 1973, 191.
61. E.g., *Register* IV, 23; ed. Caspar, 1955, 1:336, one instance of nearly a score of texts expressing the same sentiment.
62. *Register* IV, 2; ed. Caspar, 1955, 1:295.
63. *Register* I, 63; ed. Caspar, 1955, 1:92: “quia beatus Petrus apostolus,



- quemdominus Jesu Christo rex gloriae principem supra regna mundi constituit.”
64. *Register* I, 55a; ed. Caspar, 1955, 1:201–8; English translation in Tierney, 1964, 49–50.
  65. See Cowdrey, 1998, 502–7.
  66. See Oakley, 2010, 158–60.
  67. Oakley, 2010, 113–14.
  68. In his letter of March 1081 to Bishop Hermann of Metz—*Register* VIII, 21; ed. Caspar, 1955, 2:553. For a conveniently available translation of this important letter, see Tierney, 1964, 66–73. The works cited appear at 69.
  69. Gelasius, *Epistula ad Anastasiam*, ed. Schwartz, 1934, 19–24 (at 20); trans. Tierney, 1964, 13–14. Cf. the discussion in Oakley, 2010, 99–102.
  70. See below, ch. 4, and Robinson, 1988, 298–99.
  71. Tierney, 1964, 56–57.
  72. For which see Fliche, 1924–37, 3:249–55. For the tensions within the sacred college between cardinal-priests and cardinal-bishops that had been simmering already for several years before 1084 and had led Hugh Candidus to criticize Gregory VII, see Robinson, 1990, 37–41.
  73. See above, n. 17.
  74. Following here Morrison, 1969, 312–13; cf. 318–25. Morrison draws attention (333–41) to the fact that constitutional tensions within the College of Cardinals also contributed to the disputed papal election of 1130, reflecting “a schism between cardinals who advanced a ‘curialist’ program of Church government and those who represented a doctrine of papal monarchy.”
  75. Mommsen and Morrison, 1962, 148. The text may be found in *MGH: Constitutiones et Acta*, 1:106, No. 58: *Concilium Wormatiense*.
  76. Tellenbach, 1948, 143–44. In the same place as illustration of the extent to which episcopal passions had already been aroused before the breaking point, he cites the words which Archbishop Liemar had written about Gregory to his fellow bishop—Hezilo of Hildersheim: “This dangerous man wants to order the bishops about as if they were servants on his estates, and if they do not do all that he commands, they have to go to Rome or else they are suspended without legal process.”
  77. See the letters translated in Emerton, 1932, 87–89, 91, and in Mommsen and Morrison, 1962, 150–51. Extracts from all three letters and from others, too, are assembled in Tierney, 1964, 57–62.
  78. *MGH: Libelli de Lite*, 3 vols.
  79. The texts may be found in *MGH: Libelli de Lite*, 1:300–430, 568–620, and 3:63–80.
  80. Erdmann, ed., 1937; English translation in Mommsen and Morrison, 1962,

81. The texts may be found in *MGH: Libelli de Lite*, 1:432–53, 460–70, 3:642–87, 2:440–64. See also Pellens, ed., 1966, for a more recent critical edition of the Anglo-Norman Anonymous's tractates. The views expressed in these tractates are analyzed in Oakley, 2010, 165–73.
82. Thus, for example, Wido of Osnabrück's *Liber de controversia inter Hildebrandum et Henricum*, by way of defense of Henry's actions, and Bonizo of Sutri's, *Ad amicum*, by way of defense of Gregory's. The texts are printed in *MGH: Libelli de Lite*, 1:460–70 and 1:568–620. What they have to say is discussed in Carlyle and Carlyle, 1903–36, 4:222–33, 236.
83. Thus Honorius Augustodunensis, *Summa gloria*, cap. 24; *MGH: Libelli de Lite*, 3:74. Though it was sin that created the necessity of seeking a remedy in the form of the temporal power, that temporal power, as both Sts. Peter and Paul tell us, is divinely instituted and we are all of us bound to obey the royal dictates in matters secular. For the things that are Caesar's must be rendered to Caesar.
84. Honorius Augustodunensis, *Summa gloria*, cap. 2, 10, 11, 15, 17, and 18; *MGH: Libelli de Lite*, 3:65–72.
85. Manegold, *Liber and Geberhardum*, § 30; *MGH: Libelli de Lite*, 1:365; cf. *ibid.* § 47, 391–92.
86. *Ibid.* § 64; *MGH: Libelli de Lite*, 1:416. Cf. *ibid.*, §§ 50–51, 399–403.
87. Erdmann, ed., 1937 (1978), No. 13: 17–20; English translation in Mommsen and Morrison, 1962, 151–54.
88. Erdmann, ed., 1937 (1978), No. 12: 15–17; English translation in Mommsen and Morrison, 1962, 150–51.
89. Cf. *ibid.*, 157–60: Decree of the Synod of Brixen, 1080, deposing Gregory for the second time.
90. Erdmann, ed., 1937 (1978), No. 17: 162–65; English translation in Mommsen and Morrison, 1962, 164.
91. Sigibert, *Leodicensium Epistola adversus Paschalem Papam*, cap. 6–7; *MGH: Libelli de Lite*, 2:257–59.
92. Wido, *Liber de controversia*; *MGH: Libelli de Lite*, 1:466–67: “Unde dicunt nulli laico unquam aliquis de ecclesiasticis disponendi facultatem esse concessam, quamvis rex a numero laicorum merito hujusmodi separetur, cum oleo consecrationis iniunctis sacerdotalis ministerii particeps esse cognoscitur.”
93. See Oakley, 2010, 165–76, to which reference may be made for a more complete analysis of the Anonymous's central texts.
94. *De consecratione*, ed. Pellens, 1966, 134; = Boehner, ed., *MGH: Libelli de Lite*, 3:667.
95. *Ibid.* Cf. Pellens, ed., 1966, “Einleitung zu J24 in Fassung II,” 199; = Boehner, ed., *MGH: Libelli de Lite*, 3:663.

96. Thus Williams, 1951, 199–200, so that “the king as vicar of the Celestial Melchizedek and antitype of the Pope provides the religio-political unity upon which the Anonymous insists.” See also 67, 133, 137–45.
97. For an English translation of the Concordat of Worms and a brief commentary on its terms, see Tierney, 1964, 91–92 and 84–88.
98. See below, ch. 7.
99. See Oakley, 2010, 55–63.
100. See Oakley, 2010, 40.
101. Tierney, 1966, 7–8.

### Chapter 3. Recuperating the Past (i)

1. Hosseini, 2003, 1.
2. Marchand, 1996, 1–31; Goldhill, 2000, 66; cf. Butler, 1935.
3. Historians—e.g., Chenu, 1968, 2–4—have often remarked on this pattern of selective and sometimes transformative appropriation of the past in the light of contemporary needs and concerns. And Geary, 1994, 7–8, has suggested that it was sometimes a quite self-conscious process, as in the case of Arnold of Regensburg, a Bavarian monk writing about 1030, who forthrightly asserted that “not only is it proper for the new things to change the old ones, but even, if the old ones are disordered, they should be entirely thrown away.”
4. Tierney, 1966, 14.
5. Leclercq, 1969, 149–80, where he comments that medieval men made “vital use” of classical literature in a manner to which we ourselves can no longer aspire. “Ovid, Virgil and Horace *belonged* to these men as personal property; they were not an alien possession to which to refer and quote with reverence—and with bibliographical references.... Each of these authors was quoted freely and from memory and even without acknowledgement. The important thing was not what he had said or meant... but what a Christian of the tenth century *could find in him*” (*italics mine*).
6. Gilson, 1950, 424.
7. See below, ch. 5.
8. Haskins’s work was frequently republished in subsequent years. My references are given to the Meridian Books edition of 1957. For a valuable collection of essays assaying “the continuing vitality and importance of Haskins’s historical vision” and attempting a “comprehensive synthesis” (xviii), see Benson and Constable, eds., 1982. For a more recent and extensive bibliographical guide to scholarship focused on the Twelfth-Century Renaissance, see Ferguson, 1989. For a view of that renaissance as it refers to political thinking, see Luscombe and Evans, 1988, 306–38.
9. Haskins, 1957, 278; Benson and Constable, eds., 1982, xxii.

10. No one who as a student of Latin paleography has had to struggle to decode Merovingian or late Roman cursive hands would be at all tempted to minimize the great advance constituted by the development of Carolingian miniscule.
11. Facilitated by newly compiled wordlists, dictionaries, and collections of exempla.
12. Haskins, 1957, 104–14, 224–25.
13. Echoing here the title—*L'amour des lettres et le désir de Dieu*—of Jean Leclercq's classic, 1957.
14. See above, ch. 2.
15. D'Alverny, 1982, 430–31.
16. Thus Frederick W. Farrar, *History of Interpretation* (London: Macmillan, 1988), 245–46, cited in Smalley, 1941, x. For the nature of twelfth- and thirteenth-century biblical exegesis, see, in addition to Smalley, 1941, Lampe, ed., 1969, 2:83–220.
17. Thus Fournier, 1917, esp. 149–53; cf. Fournier and Le Bras, 1931–32, 2:13–14. Kuttner, 1982, 303–4, passes the judgment of “not proven” on Fournier's suggestion but views it as “not *a priori* improbable.”
18. Thus Kuttner, 1982, 316. He notes that “the Staufien emperors, Frederick Barbarossa and Frederick II, ordered the insertion into Justinian's *Code* of certain of their [own] legislative enactments; but that was high politics rather than concern for the growth of the law.” For helpful summary descriptions of the development in the Middle Ages of the two laws, civil and canon, see Stain, 1988, *Dictionary of the Middle Ages* (1982–89) 7:395–431, s.v. “Law, Canon: to Gratian,” “Law, Canon: After Gratian,” “Law Civil: *Corpus Juris*, Revival and Spread,” “Law Codes: 1000–1500.” Cf. 7:431–502, for similar descriptions of the various bodies of Jewish, Islamic, and “national” laws. On the canonistic side, and for the significance of Gratian's *Decretum*, see Chodorow, 1972, 172. For the current state of scholarly play concerning the formative period of the canon law, see the essays printed in Jasper and Fuhrmann, 2001, and Hartmann and Pennington, eds., 2008. In the latter volume, see especially the essays contributed by Peter Landau and Rudolf Weigand on Gratian's *Decretum* and its *glossa ordinaria* and by Kenneth Pennington on the decretalists.
19. Thus Kuttner, 1982, 299–300, summing up and affirming in the light of subsequent scholarship the judgment rendered classically by Friedrich Karl von Savigny (d. 1861), Max Conrat (d. 1911), and Hermann Kantorowicz (d. 1940).
20. For which, see Pennington, 1993, esp. 6–7, 185–92, 284–90. Berman, 1983, 456, notes that “in the twelfth and thirteenth centuries, the phrase ‘common law’ (*jus commune*) was primarily a concept of canon law (the major part) which was applicable in ecclesiastical courts throughout Christendom, as contrasted with local canonical custom.... The Roman law was also called

*jus commune*, since it was viewed as a body of theoretical principles and rules valid everywhere.”

21. In his classic work on the scholastic method Grabmann, 1909–11, 2:215–16 (cf. 1:234–37), ventures the opinion that the alleged influence of Abelard’s *Sic et Non* on Gratian’s *Decretum* has been “certainly very much overrated,” though its influence was felt by later canonists, especially by those among them who were also theologians. Similarly Hermann Kantorowicz, 1938a, 1–67 (at 51–54), and 1938b, 81–82. Cf. Luscombe, 1969, 222.
22. Ascribed to a certain Isidore Mercator (frequently confused later on with Isidore of Seville), the Pseudo-Isidorean compilation purported to include all the papal decretals issued down to the pontificate of Pope Gregory II (715–31), with authentic decretals being preceded by around sixty spurious decretals attributed to the very earliest popes and conveying the misleading impression that the papacy had reigned supreme over the church from its very inception. For the provenance and intended purpose of these *False Decretals*, see Oakley, 2010, 211–12.
23. The *Decretum* and the later collections of papal decretals together made up the *Corpus juris canonici* which was superseded only in 1917 when Roman Catholic canon law was finally codified in the form of the *Codex Juris Canonici*.
24. The case is made in Winroth, 2000, a very careful study. He summarizes his findings at 193–96.
25. For the great work of translation, see esp. Haskins, 1957, 278–302; d’Alverny, 1982, 421–62; and Dod, 1982, 45–79, with a table at 76–79 listing all the translations along with Greek and Arabic commentaries. Dod stresses (52) the comparative importance of the translations made directly from the Greek. They were the ones that eventually enjoyed the widest circulation.
26. For these works and their significance, see Oakley, 2010, 209–10.
27. Around 1177, Ibn Rushd wrote a commentary on the *Republic*, but it appears not to have enjoyed a wide circulation and was not translated into Latin until 1491. See Luscombe and Evans, 1988, 333–34.
28. Thus whereas Raphael identifies Aristotle by depicting him as holding a book entitled *Ethica*, Plato’s identifying book is entitled *Timeo*.
29. His translation encompasses about three-fifths of the work and extends down to § 54a.
30. See esp. Klibansky, 1961, as well as Jeaneau, 1965, who provides us with a critical edition of William’s commentary under the title *Glosae super Platonem*. For a skeptical take on the very existence of an alleged “School of Chartres” possessed of a Platonic tradition, see Southern, 1970, 29–85, and his “The School of Paris and the School of Chartres,” in Benson and Constable, eds., 1982, 113–37. For a skeptical reaction to Southern’s

- skeptical take, see Dronke, 1992, and Häring, 1974. Jeaneau, 2009, 17–29, offers a mediating appraisal. See also ch. 4, below.
31. The words are those of McGuire, 1972, 524.
  32. *A Free Enquiry into the Vulgarly receiv'd Notion of Nature*, in Boyle, *Works*, ed. Birch, 1772, 5:163–64. For the significance of Boyle's "physico-theological" views, see Oakley, 2003a, 163–87.
  33. Thus the title of one of Boyle's "physico-theological" works: *Some Considerations about the Reconcilableness of Reason and Religion*, in Boyle, *Works*, ed. Birch, 1772, 4:151–91.
  34. Grant, 1996, 74.
  35. For the articles condemned in 1277, see Piché, 1999, 80–147. For their nature and significance, see *ibid.*, 151–288; cf., Grant, 1979, 211–44.
  36. Hodgson, 1974, 1:473–98; Makdisi, 1981, 77–80; cf. Fakhry, 2004, 209–39.
  37. Southern, 1961, 191.
  38. The classic (and exhaustive) study of the crystallization of the scholastic method is that of Grabmann, 1909–11, 2 vols. Makdisi, 1981, 99–152, 245–58, gives a more succinct account which has the virtue of discussing also the analogous methodologies pursued in the schools of the Muslim world. For the history of the scholastic method in the Latin world, he bases his account on the earlier findings of J. Endres and Martin Grabmann, along with the more recent contributions of F. Pelster and Hermann Kantorowicz.
  39. "Nam sine eo, non disputatur arte, sed casu."—John of Salisbury, *Metalogicon*, 1.2, cap. 4, in *PL* 199:860; trans. McGarry, 1955, 190.
  40. Thus Kantorowicz, 1938a, 59–65, and 1938b, 81–82, where he argues that it was one of the four doctors, Bulgarus (d. ca. 1166), who was "the originator of the *quaestio disputata*," and that "Abelard's *Sic et Non* in particular contributed nothing to the legal question." The priority lay instead with the civilians and canonists.
  41. Makdisi, 1981, 259–60, 107–11 and 245, also surfaces (somewhat half-heartedly, it may be) the speculative claim that Abelard's *Sic et Non* technique of placing side by side on a given question both affirmative and negative statements, all of them drawn from the church fathers, may conceivably have owed something to earlier Muslim pedagogic practice. Thus he alludes to the ninth- and tenth-century deployment for purposes of instruction in the Muslim schools of the consensus/disagreement (*ijmāʿ/khilāf*) approach to the law and to the *hadāth* (traditions concerning the life and deeds of the Prophet). See Makdisi, 1981, 259–60; 107–11, 245.
  42. For the works cited below, see Makdisi, 1981, 253–58; cf. 117.
  43. *Ibid.*, 253–54.
  44. *Ibid.*, 256.
  45. Smith, 1957, 18n13, suggests that the Muslim counterpart to biblical

- criticism is modern *hadāth* criticism and adds: “To look for historical criticism of the Qur'an is rather like looking for a psychoanalysis of Jesus.” For the intersection over the past few decades of this fundamental issue with the debate over “Orientalism,” see Said, 1978, 60, and Al-‘Azm, 1981, 5–26.
46. For Philo and the impact of his example on Christian political thinking, see Oakley, 2010, 85–93.
  47. *Confessiones* 7:9(13); *CSEL*, 33:101; trans. Pine-Coffin, 1961, 152–55.
  48. The calculation is that of Southern, 1982, 128. Cf. Baldwin, 1971, 40.
  49. Thus Ferruolo, 1985, 3–5.
  50. Baldwin, 1971, 42.
  51. Interestingly enough, though five centuries later and in North America, it was a roughly analogous secession of students and faculty from Williams College that led to the foundation of its later archrival Amherst. See Rudolph, 1956, 9–10.
  52. As in the case of other types of guild, only the masters enjoyed full membership of the university (or, at least, did so in those universities established on the Parisian model). See Rashdall, 1936, 1:19–20.
  53. Haskins, 1957, 370–71.
  54. For a discussion of which see the interesting papers collected in Semaan, ed., 1980.
  55. For the simple equation of *madrasa* with university, see the works cited in Makdisi, 1981, 332n4.
  56. Makdisi, 1981, 22, 27–32, 293. Makdisi, who insists that *madrasa* and university were “entirely different” types of organization, frames his central thesis in his “On the Origins and Development of the College in Islam and the West,” in Semaan, ed., 1980, 22–49.
  57. Makdisi, 1981, 224–25.
  58. Makdisi, 1980, 42–43, and 1981, 40–44, 235–47.
  59. The so-called closing of the gate of *ijtihād* linked with the creation in the thirteenth century of the salaried post of *mufti*. See Makdisi, 1981, 290–91.
  60. Johannes Breviscoxe, *Tractatus de fide et ecclesia, Romano Pontifice et concilio generali*, in Dupin, ed., 1706, 1:882. For the tract in question, see Oakley, 1982, 99–130.
  61. See Ferruolo, 1985. They did somewhat less well, however, when in midcentury the secular masters became locked in combat with theologians from the mendicant orders of friars who enjoyed papal support.
  62. Oakley, 1979, 46.

## Chapter 4. Recuperating the Past (ii)

1. Haskins, 1957, 359.



2. The image is evoked by Constable, 1996, 301, in relation primarily to the movement of religious reform, though he recognizes (315) that “the reform program as a whole can be seen as the visible peak of an iceberg of even broader contemporary change.”
3. Tierney, 1982, 1.
4. For this powerful current in late medieval spirituality, see Oakley, 1979, 80–130. For Hegel’s views on the origins of moral and political individuality, see Hegel’s *Philosophy of Right*, trans. Knox, 1967, 84 § 124, 124 § 185; cf. 51 § 62, 133 § 206, 195 § 299, and 267–68, *Add.* 118, where, among other things, he mentions the differing roles ascribed to “the subject’s arbitrary will” in the political life of the ancient and modern worlds. For the further link with the Christian notion of conscience, see Knox’s editorial comment at 339. See also Hegel, *Reason and History*, trans. Hartman, 1953, 23–24.
5. Benson, 1982, 339–86.
6. Tellenbach, 1948, 102, where he notes that “right at the time of the Investiture Contest the anti-papalists felt themselves to be the champions of the true canon law. We cannot therefore simply say that the study of canon law produced a new outlook in the eleventh century; it was rather the other way round.” Cf. 115–16.
7. Tellenbach, 1993, 315.
8. In what follows I depend upon Robinson, 1988, Fournier and Le Bras, 1931–32, Michel, 1953, Fuhrmann, 1972–74, and Jaspas and Fuhrmann, 2001. Also Horst Fuhrmann, “The Pseudo-Isidorean Forgeries,” in Jaspas and Fuhrmann, 2001, 135–95, which summarizes and updates the account given in his classic three volumes (1972–74).
9. Robinson, 1988, 272, 274: “What was of secondary interest to Pseudo-Isidore... was made of primary importance in the reformers’ quotations from the False Decretals.”
10. For an interpretation of Gelasius’s statements, see Oakley, 2010, 99–102.
11. *Ibid.*
12. No. 136: *Episcoporum ad Hludowicum imperatorem relatio*, cap. 3; in *MGH: Leges, Sectio II*, 2:29: “Quod ejusdem *aecclisiae corpus* in duabus principaliter dividatur in duas eximias personas” (*italics mine*). Citing this text, Robinson, 1988, 298, comments that “the two powers now appear as the separate functions of a single institution, the ‘rule of souls,’ which is the pontifical power, being greater than the imperial power, which is temporal.”
13. Robinson, 1988, 298.
14. The letter is printed in his *Register VIII*, 21; ed. Caspar, 1955, 2:544–62. Translation in Tierney, 1964, 66–73. See above, ch. 2.
15. Robinson, 1988, 299; cf. *Decretum*, D. 96, c. 9–10; ed. Friedberg, 1879–81, 1:340.

16. The text may be found in the *Decretum, De consecratione*, D. 5, c. 15; ed. Friedberg, 1879–81, 1:146. Cf. Olsen, 1969, 61–86 (at 61).
17. Olsen, 1969; Constable, 1996.
18. Where they encountered Matt. 19:21 and Acts 2:42–47 and 4:32–37, which spoke of tightly bound communities of believers with shared property and in earnest pursuit of a common purpose.
19. Constable, 1996, 156–61.
20. Southern, 1961, 154–69.
21. Constable, 1996, 261.
22. *Ibid.*, 269–70.
23. Thus the two Victorine authors who were very influential in mediating the thinking of Pseudo-Dionysius to the later medieval world—Richard of St. Victor in the twelfth century and Thomas Gallus, abbot of St. Andrew’s in Vercelli in the thirteenth—reshaped that thinking by substituting for the characteristically Greek and Neoplatonic preoccupation with the role of intellect in the mystical ascent the more traditional Augustinian emphasis on will and love both in the life of contemplation and in the final ecstasy of communion with God. On which, see Oakley, 1979, 96–97. There is a fine discussion of the Christian preoccupation with will, intention, duty, and its transformation of the ancient Greek ethics in Gilson, 1950, 343–63. In relation to Duns Scotus, perhaps the greatest of the Franciscan philosopher-theologians, Arendt, 1978, 1:125–46, provides a perceptive discussion of the treatment of creation, contingency, freedom, selfhood, and the primacy of the will in his thinking.
24. See esp. Thomas à Kempis, *Imitation of Christ*, 1908, 59.
25. For the spirituality of the twelfth century and its connection with the individualistic piety of the later Middle Ages, see Constable, 1971a and 1971b.
26. Chenu, 1968. Cf. Benson, 1982, 284, where he notes that “a heightened sense of history is a form of self-consciousness, and in both theology and the study of *res gestae* the twelfth century was a great age of historical awareness.”
27. See the section “The Encounter with the Roman Legal Inheritance,” below.
28. This is the title of Colin Morris’s stimulating little book *The Discovery of the Individual, 1050–1200* (1972).
29. Gurevich, 1995, 249–51. The contrast between the confident assertions advanced by Colin Morris in 1972 and Aaron Gurevich’s nuanced and cautiously qualified argument a quarter of a century later in 1995 may serve to highlight the degree to which the whole discussion is fraught with disagreement. And the subsequent rise to prominence of arguments pushing back into the medieval centuries the emergence of the notion of subjective individual natural rights (a phenomenon once confidently situated in the

early modern period) has served to thicken the plot. A sense of the complexity evident in current scholarly discussions of the matter, and of the degree of disagreement which still marks it, may readily be gleaned from the following: the exchange between Caroline W. Bynum and Colin Morris on the role of the twelfth century in the discovery of individualism (with full references to the earlier contributions of André Wilmart, Walter Ullmann, Peter Dronke, R. W. Hanning, and John Benton) in Bynum, 1980, 1–17 (reprinted in Bynum, 1982, 82–109), and Morris, 1980, 195–206. Similarly, on the issue of individual natural rights, the parallel exchange between Brian Tierney, John Finnis, Douglas Kries, and Michael P. Zuckert in Tierney, 2002, 380–420. And, for a robust expression of skepticism about recent talk concerning the “discovery of the individual,” see Schmitt, 1989.

30. Gurevich, 1995, 251.
31. Symonds, 1881, 1:1–30. Cf. Michelet, 1855–78, 7:5–108 (he speaks at 9 of “La découverte du monde, la découverte de l’homme”); Burckhardt, 1958, 2:279–323.
32. Symonds, 1881, 1:15–18.
33. Nederman, 1988, 6.
34. Thus Speer, 1997, 136 and 150.
35. Gregory, 1975, 193–212 (at 193). Cf. Gregory, 1955, 175–226; Gregory, 1958, 55–150; and Gregory, 1988, 54–80. Wetherbee, 1988, 21, speaks accordingly of a “discovery of man and of nature” as being “a distinctive achievement of the period.”
36. See above, ch. 3.
37. See Oakley, 2010, 10, 28–29.
38. Eliade, 1959, 34.
39. On which, see Wolfson, 1948.
40. A simple comparison of Jowett’s translation with that of F. M. Cornford makes this latter phenomenon stand out in bold relief. Cornford himself, 1937, vi, insists that his primary aim had been “to render Plato’s words as closely as I can,” adding, “Anyone who attempts to reproduce... [Plato’s]... exalted poetic style must face the certainty of failure, with the added risk of falsifying the sense, especially by misleading reminiscences of the English bible.” He also insists (ix) that in his interpretation of the *Timaeus* A. E. Taylor had not fully recognized that the Demiurgos was “a mythical figure” and had “credited [him] with attributes belonging to the Creator of Genesis.” The parallel with twelfth-century interpretations is striking.
41. *Timaeus* § 30a; trans. Cornford, 1937, 33. Cf. *Timaeus a Calcidio translatus*; ed. Wasziink, 1962, 22: “quam quidem voluntatem dei originem rerum certissimam, si quis ponet, recte eum putare consentiam.”
42. Though in common with Philo Judaeus, and some of their patristic

predecessors they appear to have floundered uneasily in their attempts to cope with the incompatible Platonic notion of eternally preexistent matter. I am dependent here largely on Klibansky, 1961, 3–14; Gregory, 1955, 1975 and 1998; Chenu, 1968, 1–98; and, more generally, Klibansky, 1939, and Southern, 1970, 29–36, where he speaks (at 32) of the emergence after 1050 of a humanistic cast of mind to which “the whole universe appears intelligible and accessible to human reason: nature is seen as an orderly system, and man—in understanding the laws of nature—understands himself as the main part, the key-stone of nature.”

43. *Timaeus* § 28a; trans. Cornford, 1937, 22.
44. “legitima causa et ratio,” the words used by Chalcidius in translating *Timaeus* 28a: “Omne autem quod gignitur ex causa aliqua necessario gignitur; nihil enim fit, cujus ortum non legitima causa et ratio praecedat.”—*Timaeus a Calcidio translatus*; ed. Wasziink, 1962, 20–22. Gregory, 1955, 175, emphasizes the twelfth-century turn away from the scriptural view of the world as witnessing everywhere to God’s direct action, and toward a recognition of the intrinsic value of the secondary causes that a science of nature must deal with.
45. Thus Peter Dronke, “Thierry of Chartres,” in Dronke, ed., 1988, 358–85 (at 384).
46. Jeaneau, 2009, 67; 127n197, citing Thierry of Chartres, *De sex dierum operibus* 18.
47. Otten, 2004, 83–128 (at 84).
48. Otten, 2004, 71–77 (at 71). For Alain of Lille see also Wetherbee, 1972, 187–219, and Sweeney, 2006, 127–75.
49. Chenu, 1968, 9. Thus is his *Philosophia mundi* 1:23 (*PL* 172:56) William of Conches said of those who disapproved of the preoccupation with natural causation: “Ignorant themselves of the forces of nature and wanting to have company in their ignorance, they don’t want people to look into anything; they want us to believe like peasants and not to ask the reason behind things.... But we say that the reason behind everything should be sought out.... If they learn that anyone is so inquiring, they shout out that he is a heretic.” I cite this text from Chenu, 1968, 11. Cf. Gregory, 1955, 237.
50. Chenu, 1968, 14.
51. See the painstaking canvass of the literary, philosophical, and legal literature in Gaines Post, “The Naturalness of Society and the State,” in Post, 1964a, 494–561. Cf. Tierney, 1963a, 317–22, and the early thirteenth-century use of the distinction between *natura naturans* (a designation for God as creative first cause) and *natura naturata*, or the world of created beings and secondary causality.
52. Cornford, 1937, 6. Cf. Gregory, 1958, 61, who similarly emphasizes the linkage in Platonic speculation of the political and the cosmological.

53. Chenu, 1968, 30.
54. Nederman, 1988, 3–26; Post, 1964a, 494–561; Tierney, 1963a, 307–22.
55. *Timaues* 17c–19b. In his introduction, Cornford, 1937, 4, comments that “some scholars have seen evidence here for an original edition of the *Republic*, containing only the parts summarized. Such speculations are baseless. The summary is confined to the external outlines of the state outlined in *Republic* ii.... It is impossible to imagine an edition of the dialogue omitting the whole of the analogy between the structure of the soul and that of the state.”
56. Post’s remarks about its possible impact (Post, 1964a, 499, 503, 506–7, 525, 527, and 539) are almost entirely speculative in nature.
57. See his *Glosae super Platonem*, ed. Jeauneau, 1965, 75. Cf. Wetherbee, 1988, 41–42, and Struve, 1984, 307–8, where he comments that “William of Conches..., starting from theories about the philosophy of nature, which had been developed by the School of Chartres, and relating the State and society to the Macrocosmic order which is reflected in the human body, had given this cosmological version its special form.” He notes, further, that John became acquainted with the [Chartrian] cosmological version of the *Organismusvergleich* when he, according to his own statement, studied under William of Conches’s instruction for three years.”
58. *Glosae super Platonem*, ed. Jeauneau, 1965, 59, 62, 71–73, 81, 83, 97–98. Cf. Wetherbee, 1972, 35; Wetherbee, 1988, 25; Otten, 2004, 89.
59. Lapidge, 1988, 93, stresses the fact that the *De officiis* was “especially influential during the twelfth century,” as well as the fact (89) that Ambrose in his own *De officiis* “reproduced closely the *De officiis* of Cicero.”
60. *De officiis*, 1:50–51, 11–12, ed. and trans. Miller, 1913, 52–57, 12–15, where he observes that “[N]atura vi rationis hominem conciliat homini et ad orationis et ad vitae societatem ingeneratque.” *De inventione*, 1:2–3; ed. and trans. Hubbell, 1949, 4–9, where he describes eloquence as “a faculty conferred [*profectae*] by nature.” See Wood, 1988, esp. 70–89, 120–42; Nederman, 1988, 3–26; Dickey, 1968, 1–41.
61. *De inventione*, 1:2–3; ed. and trans. Hubbell, 1949, 4–7.
62. *De officiis*, 1:50; ed. and trans. Miller, 1913, 52–53, where Cicero speaks of “the principles of fellowship and society that nature has established among men.” Cf. *De inventione*, 1:3; ed. and trans. Hubbell, 1949, 6–7.
63. Nederman, 1988, 4–6.
64. See Oakley, 2010, 3–10.
65. Nederman, 1988, 5, 10–12, 26; cf. Tierney, 1982, 36–39.
66. In this connection, Walter Ullmann’s somewhat promiscuous deployment of the expression “Aristotelian naturalism” stands as a warning about the sort of conceptual confusion likely to be generated thereby. On which, see Oakley, 1973, 3–48; reprinted in Oakley, 1999, 25–72.

67. Chodorow, 1972, 7, 97, 99, 188.
68. See above, ch. 3.
69. In what follows I rely largely on Kuttner, 1982, d'Entrèves, 1951, Chodorow, 1972, Tierney, 1982 and 1997, Pennington, 1984, 1988, and 1993. Carlyle and Carlyle, 1903–36, 2, devote a whole volume to the political thinking of the civilians and canonists from the tenth to the thirteenth centuries with a useful apparatus of lengthy quotations from the various legal collections and commentaries some of which are not readily accessible.
70. *Digest* I, 1, 1; ed. Krueger, Mommsen, and Schoell, 1899–1902, 1:1.
71. *Digest* I, 1, 9 and 11; ed. Krueger, Mommsen, and Schoell, 1899–1902, 1:1.
72. He sees the natural law, in effect, not as involving rational judgment but as a sort of animal instinct leading, for example, to “the union of male and female” and the procreation of off spring. See *Digest* I, 1, 1; ed. Krueger, Mommsen, and Schoell, 1899–1902, 1:1.
73. D'Entrèves, 1951, 30, i.e., “in the sense that, in a case of conflict, the one should overrule the other.” Similarly, Stein, 1988, 65: “Nowhere in the codification is it suggested that a rule of civil law which contravenes natural law is any less valid on that account.”
74. A doctrine to which Cicero gave classic expression in the *De republica*, III, xxii; ed. Keyes, 1966, 210–11. Stoic views, however, were far from uniform—see Crowe, 1977, 30–33.
75. D'Entrèves, 1951, 27–30, where he echoes the views of Schulz, 1936, and Zulueta, 1957.
76. Carlyle and Carlyle, 1903–36, 2:32n4, cites the pertinent text.
77. For Isidore, see Oakley, 2010, 153, 158, 211.
78. Though Gratian emphasizes the importance of custom or usage as well as positive legal enactment. See *Decretum*, D. 1, c. 1–9; ed. Friedberg, 1879–81, 1:1–3.
79. *Decretum*, D. 1, *Gratianus*; ed. Friedberg, 1879–81, 1:1.
80. Carlyle and Carlyle, 1903–36, 2:103–4, with Rufinus's texts cited at 103n2 and 104n1.
81. *Decretum*, D. 6, c. 3; cf. D 1, *Gratianus*; ed. Friedberg, 1879–81, 1:11 and 1.
82. See *Decretum Gratiani*, 1514, D. 1, c. 7, in *v. jus naturale* where he says, “et omne jus divinum dictus naturale jus.”
83. *Decretum*, D. 6, c. 3; ed. Friedberg, 1879–81, 1:11.
84. See, for example, the contradictory viewpoints proposed by Grabmann, 1923, 16–18, and Chodorow, 1972, 96–111.
85. *Decretum*, D. 5, *Gratianus*; and D. 8, 2a pars *Gratianus* 1; ed. Friedberg, 1879–81, 1:7 and 13. Speaking of the difference between natural law and

- all other laws, Gratian says, “Natural law holds the primacy over all others [i.e., all other laws] because of its age and dignity. For it began with the appearance of rational creatures; nor does it change over time, but remains immutable.” (Friedberg, 1879–81, 1:7.)
86. Thus, classically, the *glossa ordinaria*. See *Decretum Gratiani*, 1514, D. 1, c. 7, in *v. jus naturalis*.
  87. *Decretum*, D. 5, *Gratianus*; D 8, 2a pars, *Gratianus*; ed. Friedberg, 1879–81, 1:7 and 13.
  88. Thus d'Entrèves, 1951, 33.
  89. Chodorow, 1972, 250 and 75.
  90. See the extended discussion of this intricate issue in Chodorow, 1972, 187–210.
  91. Carlyle and Carlyle, 1903–36, 2:143–52.
  92. Thus *Cod.* I, 17.1, and 1, 17.2, 18; *Novels* CV, 4; ed. Krueger, Mommsen, and Schoell, 1899–1902, 2:69, 73; 3:507.
  93. *Cod.* I, 17, 1, 7: “Cum enim lege antiqua, quae regia nuncupabatur, omne jus omnisque potestas populi Romani in imperatoriam translata sunt potestatem”; ed. Krueger, Mommsen, and Schoell, 1899–1902, 2:70.
  94. For the meaning of the *populus Romanus*, see below, ch. 6.
  95. *Digest* I, 3, 31, and I, 4, 1; ed. Krueger, Mommsen, and Schoell, 1899–1902, 1:6–7.
  96. McIlwain, 1958, 57.
  97. Thus Gaius in the second century CE: *Inst.* I, 2, 7; ed. Krueger, Mommsen, and Schoell, 1899–1902, 1:1.
  98. Thus Ulpian in the third century CE: *Digest* I, 4, 1; ed. Krueger, Mommsen, and Schoell, 1899–1902, 1:7, where the word “conferat” is used. In *Inst.* I, 2, 6 (ed. Krueger et al., 1:1), however, “concessit” replaces “conferat,” suggesting an action concluded definitively in the past. *Codex* I, 17, 1, 7 (see above, n. 86) has “translata sunt.” See the discussion in McIlwain, 1958, 45–46, 156n5; Kantorowicz, 1957, 103–6.
  99. McIlwain, 1958, 42, Stein, 1988, 37. That notwithstanding, and at the expense of a considerable measure of anachronism, Carlyle and Carlyle, 1903–36, 1:64, did not hesitate to characterize *Digest* I, 4, 1 as “an almost paradoxical description of an unlimited personal power founded on a purely democratic basis,” or to add: “We consider the Roman lawyers as expressing one aspect of the theory out of which the medieval and modern democratic conception of the state has grown.”
  100. See below, ch. 6.
  101. In commenting on that fact, Pennington, 1988, 430, adds: “It was a complicated task that was not made any easier by received notions of Germanic law, which emphasized the sanctity of law and the ruler’s responsibility to preserve laws and custom.”



102. For the texts in question, see above, nn. 95 and 98.
103. *Cod. I*, 14, 4; ed. Krueger, Mommsen, and Shoell, 1899–1902, 2:68: “Digna vox majestate regnantis legibus alligatum se principem profiteri: adeo de auctoritate juris nostra pendet auctoritas. Et revera majus imperio est submittere principatum.” For a discussion of the text itself and some disagreement about the best way to translate the first line, see Schulz, 1945, 160–61, and Kantorowicz, 1957, 110ff. I have preferred to follow Schulz’s rendering of the line in question.
104. Pennington, 1988, 438–39, adding that “through the doctrine of inalienability the jurists emphasized the limitations that a monarch’s office placed on his sovereignty and stressed the role of the king as guardian... not lord, of his realm.”
105. Pennington, 1988, 436. Cf. Tierney, 1982, 13–25; Robinson, 1988, 282–88.
106. *Decretum*, C. 2, qu. 6, c. 11–12; C. 9, qu. 3, *dictum ante*, c. 3; ed. Friedberg, 1879–81, 1: 469–70, 607. Bernard, *De consideratione*, II, 8:16; ed. Leclercq and Rochais, 1963, 424: “Ergo, juxta canones tuos, alii in partem sollicitudinis, tu in plenitudinem potestatis vocatus es. Aliorum potestas certis artatur limitibus: tua extenditur et in ipsos, qui potestatem super alios acceperunt.”
107. Pennington, 1988, 434, paraphrasing an anonymous and unprinted gloss.
108. Pennington, 1988, 434. For the notion of the emperor as a *lex animata*, see Oakley, 2010, 88, 95, 105.
109. Tierney, 1982, 14–16.
110. *Ibid.*
111. *Decretum*, D. 40, esp. c. 6; ed. Friedberg, 1879–81, 1:146: “[Papa] a nemine est judicandus, nisi deprehendatur a fide devius.” For the Symmachan forgeries magnifying papal power, see Oakley, 2010, 210–11.
112. See above, ch. 2.
113. The image is that evoked by Tierney, 1982, 1, and the argumentative trail pursued here is that blazed more recently in Tierney, 1997. For the Symmachan forgeries magnifying papal power, see Oakley, 2010, 210.
114. Minogue, 1979, 3. In this and in what follows, I draw on the account in Oakley, 2005, 87–109.
115. Thus Strauss, 1953; MacPherson, 1962. For a latter-day Straussian view, see Fortin, 1996, 243–64. Cf. Kraynack, 2001, 101–13.
116. Lagarde, 1st ed., 1934–46, 6; 2nd ed., 1956–70, 5; Villey, 1964, 94–127, the latter showing like Strauss a marked hostility to the modern notion of individual, subjective rights. “Cet infant monstrueux” is the term he uses of that notion.
117. Thus Rommen, 1954, 415–20; Berlin, 1969, 129n1; Dumont, 1986, 62–66; Bastit, 1990, 244, 298, 301.
118. Tuck, 1979, though he insisted (25) that “it was Jean Gerson [1368–1429]

who really created the theory.” So far as the contemporary glossators on the canon law were concerned, Harold Berman, 1983, e.g., 226–30, later found that in their commentaries on such matters as marriage law and the law of contracts an intriguing emphasis on internal disposition and individual will is evident.

119. Tuck, 1979, 13–15. Admittedly, Tuck’s presentation is not always clear or consistent. For a probing critique, see Tierney, 1983, 429–41.
120. Reid, 1991-92, 59 (*italics mine*) and now Reid, 2004, esp. 18–24, 211–13. Taking canonistic matrimonial law as a powerful illustration of this claim, he explores it from 72–91. Reference should also be made to Coleman, 1993, 103–19, and to a lengthy and illuminating article by Swanson, 1997, 399–458, which adopts an approach concordant with that of Tierney and Reid. For a judicious qualification of that approach made by a legal scholar who sees himself, nonetheless, as “contributing to this revisionist strand of scholarship,” see Helmholtz, 2003 and 2005. He argues (2003, 302) that “when examined more closely, it becomes clear that the medieval law took a decidedly less individualistic approach to rights than is common today.” Cf. the parallel (if less well-grounded) qualification introduced in Oakley, 2005, 106–9.
121. Certainly, the process of transmitting such ideas down into the “classic age” of natural-rights discourse in the seventeenth century appears to have been exceedingly complex. A good sense of this complexity and of the difficulty scholars are experiencing in constructing a single, agreed-upon historical account of how exactly it happened may be gleaned from a comparison of the varying versions proffered by Tuck, 1979, Brett, 1997, and Tierney, 1997. For the current state of scholarly play, see Tierney, 2002, 389–420 (“Natural Law and Natural Rights: Old Problems and Recent Approaches,” with responses by John Finnis, Douglas Kries, and Michael P. Zuckert). Overview in Oakley, 2005, 87–109.
122. Sabine, 1937, 206. Cf. Liebeschütz, 1950: “the first comprehensive treatise on the State in the Middle Ages”; Dyson, 2003, 114: “John of Salisbury... [is] the first medieval author to attempt an extended and relatively abstract treatment of political relations”; Nederman, 2005, 62: John “richly deserves a reputation for having restored the theoretical study of public life to a place of prominence in the intellectual system of the West.”
123. Webb, 1909, 2 vols., 250,000 words. Keats-Rohan, 1993, prints a critical edition of books 1–4 of the *Policraticus* based on eleven of the more than sixty surviving manuscripts, whereas Webb made use of few manuscripts. But the latter’s edition remains the standard version of the complete Latin text, and my references here are given to it. In what follows I rely largely on Liebeschütz, 1943 and 1950, the essays gathered together in Wilks, 1984; Dyson, 2003; and Nederman, 2005. For the direction taken by scholarly work on John of Salisbury over the course of the past sixty and more years,

- see Hohenleuter, 1958, 493–500, and Luscombe, 1984, 21–37, 445–57.
124. *Pol.* 7:11; ed. Webb, 1909, 2:135: “Si enim secundum Platonem philosophus amator Dei est, quid aliud est philosophia nisi divinitatis amor.” There is no complete English translation of the *Policraticus*, but something close to one can be constructed by putting together the two partial (but complementary) translations by Pike, 1938, and Nederman, 1990.
  125. Liebeschütz, 1950, appendix 3, 116–17, where he helpfully takes *Pol.* 5:12, ed. Webb, 1909, 1:334–92, as “a very clear example of the way in which associations of ideas interrupt the logical sequence of thought in John of Salisbury’s writings.” See also 26, 67–73.
  126. Thus Nederman, 2005, 27, 56, following in this the thesis proposed by Von Moos, 1984, 238–309. For a detailed descriptive analysis of John’s use of exempla, see Von Moos, 1984, 207–61.
  127. Nederman, 2005, 51, 55–56.
  128. Nederman, 1990, xx.
  129. Luscombe and Evans, 1988, 326.
  130. See Martin, 1984, 179–201.
  131. Liebeschütz, 1950, 24–25, and, for an attempt to prove the fictional nature of the *Institutio Trojani*, Liebeschütz, 1943, 33–39. See also, Dyson, 2003, 117; Luscombe, 1984, 32–33; Nederman, 1990, xx, and 2005, 54–55. Kerner, 1977, 180–81, is a dissenting voice on this issue.
  132. Nederman, 2005, 54–55.
  133. A point emphasized by Carlyle and Carlyle, 1903–36, 3:140–42.
  134. *Pol.* 4:6; ed. Webb, 1909, 1:253; trans. Nederman, 1990, 42.
  135. *Pol.* 4:2, 8:22; ed. Webb, 1909, 1:237, 2:399; trans. Nederman, 1990, 30, 215.
  136. *Cod.* 1, 14, 4; ed. Krueger, Mommsen, and Schoell, 1899–1902, 2:68. John of Salisbury, *Pol.* 4:1; ed. Webb, 1909, 1:237; trans. Nederman, 1990, 29.
  137. Liebeschütz, 1950, 79–84, where he notes John himself owned a copy of the *De officiis*.
  138. See *Pol.* 1:16, 13, 2:12, and esp. 7:5; ed. Webb, 1909, 1:40, 63, 85–86, 2:107–10; trans. Pike, 1938, 30–31, 53, 73, 228–31. John’s Plato, of course, is the Christianized Plato of Chalcidius and William of Conches. Nature is “the will of God” and “the wisdom and goodness of God, in which originate all things, are with perfect truth called nature.”—*Pol.* 2:12; ed. Webb, 1909, 1:85–86, trans. Pike, 1938, 73.
  139. *Pol.* 5 and 6; ed. Webb, 1909, 1:280–368, 2:1–89; trans. Nederman, 1990, 65–143. For Plato’s evocation of the analogy between Body of the World, the World-Soul, and the Human Soul and Body, all portrayed (47e) as “works wrought by the craftsmanship of reason,” see *Timaeus* §§ 29d–47e; trans. Cornford, 1937, 33–159.

140. His discussion touches in leisurely fashion on a multitude of issues, including the ancient law for the number of dinner guests—i.e., “not fewer than the Graces, who do not exceed three, not more than the Muses, which make twelve.” *Pol.* 8:10; ed. Webb, 1909, 2:293; trans. Pike, 1938, 354.
141. *Pol.* 8:17; ed. Webb, 1909, 2:345–46; trans. Nederman, 1990, 191.
142. *Pol.* 5:17, cf. 8:18; ed. Webb, 1909, 1:365, cf. 2:358; trans. Nederman, 1990, 99–100, cf. 201.
143. *Pol.* 2:12; ed. Webb, 1909, 1:85–86; trans. Pike, 1938, 23. John sees much in Plato’s work “which is in harmony with the words of the prophets,” and even argues that in *Timaeus* 27c–29e, “he [Plato] indubitably appears to mention the Trinity which is God.” See *Pol.* 7:5; ed. Webb, 1909, 2:108; trans. Pike, 1938, 230–31. Cf. Liebeschütz, 1950, 74–75.
144. *Pol.* 2:11; ed. Webb, 1909, 1:85: “Illa quoque quae diem iudicii praevenire dicuntur per dies quindecim, si tamen futura sunt, quoniam de scriptura canonica firmamentum non habent, *naturae legibus minime subjacebunt dum tamen naturam hic*, ut in locis quam pluribus, *dicamus solitam cursum rerum, aut causae occultas eventuum quarum ratio reddi potest*” (italics mine); trans. Pike, 1938, 72.
145. *Pol.* 2:11 and 21; ed. Webb, 1909, 1:84 and 120; trans. Pike, 1938, 72 and 105.
146. *Pol.* 3:1; ed. Webb, 1909, 1:173; trans. Nederman, 1990, 16. In this passage, John contrives, in effect, to conflate two passages from Paul’s Epistle to the Romans which medieval theologians frequently cited to prove that God can be known through his creation and that his moral law is inscribed in the hearts of all men, Gentile no less than Jew. Thus Rom. 1:19–20: “For what can be known about God is plain to them because God has shown it to them. Ever since the creation of the world his invisible nature, namely his eternal power and deity, has been clearly perceived in the things that have been made. So they are without excuse.” And Rom. 2:14–15: “When Gentiles who have not the law do by nature what the law requires, they are a law to themselves even though they do not have the law. They show that what the law requires is written on their hearts, while their conscience also bears witness and their conflicting thought accuse or perhaps excuse them.”
147. *Pol.* 1:2; ed. Webb, 1909, 1:19–20, where John deploys the terms *jus naturae* and *jura naturae*; trans. Pike, 1938, 12 and 19.
148. Liebeschütz, 1950, 61–62; cf. 74.
149. *Pol.* 5:2; ed. Webb, 1909, 1:282, where he concludes: “Porro, sicut anima totius habet corporis principatum, ita et hiis, quos ille religionis praefectos vocent, toti corpori praesunt”; trans. Nederman, 1990, 66–67.
150. *Pol.* 4:3; ed. Webb, 1909, 1:239; trans. Nederman, 1990, 32.
151. *Pol.* 4:6; ed. Webb, 1909, 1:250–51; trans. Nederman, 1990, 41.

152. *Pol.* 5:2; ed. Webb, 1909, 1:282–83; trans. Nederman, 1990, 67.
153. *Pol.* 4:1; ed. Webb, 1909, 1:235; trans. Nederman, 1990, 28.
154. *Pol.* 4:2, 8:17, ed. Webb, 1909, 1:237, 2:345; trans. Nederman, 1990, 30–31, 191. *Pol.* 4:1, 6:25, 8:17; ed. Webb, 1909, 1:237, 2:73–74, 345; trans. Nederman, 1990, 28–29, 137, 190–91.
155. *Pol.* 4:4; ed. Webb, 1909, 1:244; trans. Nederman, 1990, 35. Here John is referring obliquely to the celebrated maxim of Roman law (*princeps legibus solitus est*) so often adduced to justify the ascription to the ruler of absolute power.
156. *Pol.* 4:2; ed. Webb, 1909, 1:238; trans. Nederman, 1990, 30. Here the allusion is to that other Romanist maxim of absolutist implication: *Quod principi placuit legis vigorem habet*.
157. *Pol.* 4:1; ed. Webb, 1909, 1:237; trans. Nederman, 1990, 29. For the *Digna vox*, see *Cod.* 1.14.4; ed. Krueger, Mommsen, and Schoell, 1899–1902, 2:68 (the text is printed in n. 103, above).
158. *Pol.* 4:1, 6:25, 8:17; ed. Webb, 1909, 1:237, 2:73–74, 345; trans. Nederman, 1990, 28–29, 137, 190–91.
159. *Pol.* 8:17; ed. Webb, 1909, 2:348, cf. 345: “tyrannus est adversarius fortitudinis et Luciferianae pravitatis imago.” Trans. Nederman, 1990, 191, cf. 193.
160. For the extensive literature on the matter, see Rouse and Rouse, 1967, 693–709.
161. See *Pol.* 3:15, 8:18; ed. Webb, 1909, 1:232–33, 2:364; trans. Nederman, 1990, 25, 205 (where he notes that it has been deemed honorable to kill tyrants “*if they could not be otherwise constrained*” (italics mine). In *Pol.* 8:20; ed. Webb, 1909, 2:378; trans. Nederman, 1990, 206–10, he also appears to rule out the use of poison and the killing of a tyrant by anyone bound to him “by the obligation of fidelity or sacred oath.” And something of a shadow is cast athwart his whole advocacy of tyrannicide by the fact that he also embraces the patristic notion that even tyrants can be viewed as “the ministers of God who carry out his will.” See *Pol.* 8:18, ed. Webb, 1909, 2:358–59; trans. Nederman, 1990, 202.

## Chapter 5. Recuperating the Past (iii)

1. Lovejoy and Boas, 1935, appendix, 447–56. Cf. the similar effort by C. S. Lewis, 1960, 24–74, in relation to the use in English of the word “nature” and its equivalents “*kind*” and “*phusis*.” Having also discriminated among the multiple meanings of “pragmatism,” Lovejoy came to enjoy among his contemporaries a reputation for being possessed of an almost Scotistic capacity for drawing precise distinctions. See Oakley, 1984, 32–34 and 130n63.
2. Thus Gilby, 1958, 109–10.

3. Barker, 1948, lxxii–lxxiii, where he helpfully discusses the vocabulary of the *Politics* and the meaning to be ascribed to Aristotle’s philosophical terminology.
4. Randall, 1962, 126.
5. See Aristotle, *Physics*, ii, 3, 194b–195a, and *Metaphysics*, v, 2, 1, 1013a–b; ed. Ross (1908–52), cf. Wheelwright, ed., 1951, xxxv–xxxvii; Randall, 1962, 54, 65–67, 123–29.
6. Randall, 1962, 124, where he also illustrates the four causes as follows: “Thus we can ask, What is it? It is a flag. Out of what is it made? Bunting. By what was it made? The firm of Rosenkranz and Guildenstern. For what was it made? To serve as a patriotic symbol.”
7. See the helpful discussion in Randall, 1962, 225–29.
8. For a dramatic evocation of the importance attaching to the location of the intelligible in human affairs in the end rather than in any sort of antecedent condition, see the wonderful passage in the *Phaedo* where Socrates, awaiting his death at the hands of the Athenians and rejecting his own youthful preoccupation with natural philosophy (focused as it had been on what was later to be called “efficient causality”), affirms that it is the purposive choice of what is best, the end toward which moral living is oriented, that alone renders intelligible why he has chosen to remain and undergo his sentence.—*Phaedo*, 96a–100a; ed. Hamilton and Cairns, 1961, 78–81.
9. Basic bibliographical information on these thinkers may be found in Gilson, 1955, at 739, 749, and 759. Under the rubric of “Les successeurs de saint Thomas: [1270–1300],” there is a brief analysis of what they had to say on matters political in Lagarde, 1956–70, 2:106–25. For Peter of Auvergne, see also Blythe, 1992, 77–91. For Ptolemy of Lucca, see Blythe trans., 1997, 1–52.
10. Like some of the others mentioned above, Aegidius Romanus is probably to be numbered among the pupils of Aquinas and may, in turn, have been one of James of Viterbo’s teachers.
11. D’Entrèves, 1959, vii. The scholarly literature on Aquinas is, of course, of oceanic proportions. Having been a student of Étienne Gilson’s in the 1950s, I owe my first grounding in things Thomistic to his energetic teaching and writing. For what follows I have found particularly helpful d’Entrèves, 1939 and 1951, Gilby, 1958, Eschmann, 1997, Lisska, 1996, Kerr, 2002, as well as the essays gathered together in Kretzmann and Stump, eds., 1993, and Davies, 2002. Most of my references to the pertinent texts of Aquinas have been given to d’Entrèves, 1959, which conveniently prints on facing pages the Latin text and an English translation by J. G. Dawson. Otherwise, references to the *Summa theologiae* have been given to Gilby, ed., 1966–2005, which also prints Latin text and English translation on facing pages. References to the *De*

- regno: ad regem Cypri* have been given the English translation by Eschmann, 1949, which was based on a Latin text established after careful scrutiny of the manuscript tradition.
12. Weisheipl, 1983; Tugwell, ed., 1988, 201–67; Torrell, 1996. Cf. the comment in Davies, 2002, 5.
  13. For the Averroistic version of Aristotelianism and the matter of Latin Averroism, see Gilson, 1955, 347–402. While what has been labeled “Latin Averroism” was no more than tangential to the history of political thought, it is well to remember that Guido Vernani in the fourteenth century and Bruno Nardi in the twentieth were both moved to level charges of Averroism against Dante’s political tract the *De monarchia*. For which, see Cassell, 2004, 55–60, 114, 178, 220n47.
  14. Kerr, 2002, 215n27, comments on the fact that by the 1980s “the view now dominant outside English-language approaches to Thomas” was that “his thought is best interpreted as neo-Platonic.”
  15. Though none of them related to his political thinking. See Piché, 1999, for commentary on the condemnations. See also, Grant, 1979.
  16. Eschmann, 1997, 153.
  17. See the interesting discussion of these various Thomisms in Kerr, 2002 where, at 80–93, he discusses the Heideggerian sympathizers. See also, for the approach to Aquinas adopted by the proponents of Radical Orthodoxy, Milbank and Pickstock, 2001, and, for an attempt to bring a Foucauldian perspective to bear on Aquinas’s texts, Rosemann, 1999, 133–58.
  18. On which, see esp. Jordan, 1992, and idem, 2006, 60–88.
  19. For Bertrand Russell, 1945, 463, there was “little of the true philosophical spirit in Aquinas.” But for Kenny, ed., 1969, 1, he was “one of the dozen greatest philosophers of the western world,” ranking in some dimensions of his thought with “Plato and Aristotle, with Descartes and Leibnitz, with Locke and Hume and Kant.”
  20. Kerr, 2002, 15–16.
  21. See George, ed., 1992, vi–vii; Hittinger, 1983, esp. 8, 190–96; Weinreb, 1987, 97–115; Fortin, 1982, 590–612. Similarly, Lisska, 1996, 166–87, where, by way of criticism of Finnis’s Cartesianism, he evokes Henry Veatch’s “ontological foundationalism” and “metaphysics of finality.”
  22. E.g., by Gierke, 1900, 172–73n236.
  23. Francisco Suárez (d. 1617). Thus Gierke, 1900, 172–73n236, appears to have accepted Suárez’s version as an accurate rendition of Aquinas’s own viewpoint and, by so doing, misled later scholars like Gough, Van Leyden, and Singh who had relied on him in their own efforts to assess the precise balance of intellectual and voluntarist elements in John Locke’s own natural-law thinking and to appraise it in the light of earlier scholastic views. On which, see Oakley and Urdang, 1966, 99–101, and Oakley, 1997,



- 624–51—this last reprinted in Oakley, 1999, 217–48 (at 222–23).
24. *ST* 1a 2ae, qu. 90, art. 1 *ad tertium*; ed. d'Entrèves, 1959, 110–11.
25. Kerr, 2002, 116; Eschmann, 1997, 80–81, 87, 160–65, 218.
26. See, for example, what he makes of Aquinas's unambiguously rationalist definition—*ST* 1a 2ae, qu. 90, art. 4; ed. d'Entrèves, 1959, 112–13, in his *De legibus ac Deo Legislatore*, I, cap. 12, § 3; ed. Brown, 1944, I, 64. For an analysis of Suárez's legal philosophy see Davitt, 1951, 86–108, and, for a useful brief discussion, Maurer, 1962, 367–71.
27. It has been customary to attribute the material from book 1, chapter 1, to book 2, chapter 4, to Aquinas and the rest of the work to Ptolemy of Lucca. But for challenges to Aquinas's authorship even of that first section, see Mohr, 1974, 127–42, and Black, 1992, 22. Black's stance on the matter appears to be intuitive (he proffers no argument in support of it), and I do not find Mohr's case conclusive. Nor, it seems, does Blythe, 1997, 3–7.
28. Eschmann, 1997, 153.
29. *Sent.* I, dist. 2; ed. Mandonnet and Moos, 1929–47, 1:57. See Eschmann, 1997, 13–17, whom I follow here, and Kerr, 2002, 114–15.
30. Following here Eschmann, 1997. See esp. 80–81, 87–88. Also 155, where he stresses Aquinas's "strong emphasis on *interiorizing* morals. The formal element of a moral act consists in something interior, not in something exterior," i.e., "your intention, not exactly what you do, but *for what* you do it" (italics mine).
31. Eschmann, 1997, 3.
32. In *Metaphysicam Aristotelis*, Lib. V, lectio 3, no. 782; ed. Ross, 1908–52, 259b. Cf. *ST* 1a 2ae, qu. 1, art. 2; ed. Gilby, 1964–76. I cite this text from Eschmann, 1997, 77n124. Cf. 74–85, where he comments on *ST* 1a 2ae, qu. 1, art. 2, with its conclusion that "it is necessary that all agents act for an end," as well as 43, where he notes that "the object of Question 1 is to prove that human actions and human life fall within a system, an order of ends, unified by the 'formal notion of an ultimate end.'" Similarly 121, where he insists that it remains "Saint Thomas's deepest conviction, one of the most fundamental assertions of his ethical thought" that "human activity is a teleological unity, formed by an ultimate end."
33. Thus *Sent.* II, dist. 44, qu. 2, art. 2; ed. d'Entrèves, 1959, 180–87. *De regimine Judaeorum*; ed. d'Entrèves, 1959, 84–95 (at 95).
34. On which, see Sigmund, "Law and Politics," in Davies, ed., 2002, 328–29 and 335, who lists such topics among "Aquinas's views on society and politics that are unacceptable today." Many of the pertinent texts of Aquinas (*ST* 2a 2ae, qu. 10, arts. 1, 10, 11, and 12) are gathered together in d'Entrèves, ed., 1959, 152–59.
35. *ST* 1a 2ae, qu. 90, the *respondeos* to arts. 1, 3, and 4, as well as the reply to the third objection in art. 1; ed. d'Entrèves, 1959, 109–13.

36. *ST* 1a 2ae, qu. 91, art. 1 *resp.*; ed. d'Entrèves, 1959, 112–13.
37. For the background to that claim, I venture to refer the reader to Oakley, 2005, 27–34.
38. See also *ST* 1a 2ae, qu. 93, art. 1 *resp.*; ed. d'Entrèves, 1959, 118–21, where he says that “as the ideal of the divine wisdom, in so far as all things are created by it, has the quality of an art, or exemplar or Idea, so that the ideal of divine wisdom considered as moving all things to their appropriate end has the quality of law.” The reference here is to the Christianized version of the Platonic Forms, Ideas, or Archetypes understood now not as independent and eternally subsistent entities but as thoughts or ideas in the mind of God. See the brief discussion in Oakley, 2005, 45–48.
39. *ST* 1a 2ae, qu. 91, art. 1 *resp.*; ed. d'Entrèves, 1959, 112–13.
40. *ST* 1a 2ae, qu. 91, art. 1 *resp.*; ed. Gilby, 1964–76, cf. *ST* 1a 2ae, qu. 93, art. 1 *resp.*; ed. d'Entrèves, 1959, 118–21.
41. *ST* 1a 2ae, qu. 90, art. 1, reply to objection 3; ed. Gilby, 1964–76, 28:20–21.
42. *ST* 1a 2ae, qu. 90, art. 2 *resp.*; ed. d'Entrèves, 1959, 112–15.
43. This being the definition of natural law proffered by the second-century Roman jurisconsult, Ulpian. See above, ch. 4.
44. Such as: “that a man should avoid ignorance, that he must not give offence to others with whom he must associate, and all notions of like nature.”—*ST* 1a 2ae, qu. 94, art. 2 *resp.*; ed. d'Entrèves, 1959, 22–23.
45. For Leibniz, the human mind being an image of the divine mind “capable of knowing the system of the universe, and of imitating something of it by architectonic patterns,” human minds are also “capable of entering into a kind of society with God,” so that there is a “common community of justice” between God and men, grounded in “the eternal [and shared] rules of wisdom and justice,” a community wherein “universal right is the same for God and man.” See Leibniz, *Monadology*, props. 83 and 84, in Parkinson, ed., 1973, 192–83, and his “Preliminary Discourse on the Conformity of Faith with Reason,” in Farrer, ed., 1952, 94.
46. Kuttner, 1936, 728–40. Cf. Chalcidius’s commentary in *Timaeus a Calcidio translatus*; ed. Wasziink, 1962, 59.
47. *ST* 1a 2ae, qu. 91, art. 3 *resp.*, as well as qu. 95, art. 11, *resp.*, art. 2 *resp.*, and art. 4 *resp.*; ed. d'Entrèves, 1959, 114–15, 126–33. Cf. qu. 96, art. 3 *resp.*; *ibid.*, 134–35. Such derivations (as he notes in art. 2) take more than one form. Some are made “from the natural law by way of formal conclusion—as the conclusion ‘Do no murder’ derives from the precept ‘Do harm to no man.’ Other conclusions are arrived at as determinations of particular cases. So the natural law establishes that whoever transgresses shall be punished. But that a man should be punished by a specific penalty is a particular determination of the natural law.”
48. *ST* 1a 2ae, qu. 91, art. 4 *resp.*; ed. d'Entrèves, 1959, 114–17, where he adds

- that human law being unable to “reach to the hidden interior actions of the soul,” it is “insufficient to order and regulate interior actions.” And yet “the perfection of virtue requires that a man should be upright in both [internal and external] actions.” Hence the need for divine law. See also, qu. 91, art. 5; ed. Gilby, 1964–76, 28:32–35.
49. In his commentary on the first book of Aristotle’s *Politics*, Aquinas notes, therefore, that “it is necessary for the completeness of philosophy, to institute a discipline which will study the city; and such a discipline (*doctrina*) is called politics or the science of statecraft (*politica*..., *id est, civilis scientia*).”—*Commentum in Libros Politicorum seu de rebus civilibus*, Lib. I, lectio 1; ed. d’Entrèves, 1959, 196–97.
  50. On which, see Oakley, 2010, 8–9, and affiliated notes.
  51. Ibid.
  52. And especially so on matters pertaining to his views on monarchy and the mixed constitution. See, e.g., Tierney, 1979, 1–11, and Blythe, 1992, 40–41 and n2.
  53. *ST* 1a pars, qu. 92, art. 1 *ad 2um*, qu. 96, art. 3 *resp.*, and art. 4; ed. d’Entrèves, 1959, 102–7.
  54. For the pertinent views of Innocent IV, see below, ch. 7.
  55. *ST* 2a 2ae, qu. 10, art. 10; cf. qu. 12, art. 2; ed. d’Entrèves, 1959, 152–57. Though Aquinas does wobble a bit on this issue here, as he affirms the just right of the church “in virtue of her divine authority” to abrogate the pagan right to govern.
  56. Morrall, 1958, 72, makes this point with admirable concision.
  57. *Commentum in X. libros Ethicorum ad Nicomachum*, Lib. I, lectio 1; ed. d’Entrèves, 1959, 190–91.
  58. *Commentum in Libros Politicorum seu de rebus civilibus*, Lib. I, lectio 1; ed. d’Entrèves, 1959, 106–7.
  59. These fragments, written between 1265 and 1270, are authentically his but ordered editorially in somewhat jumbled fashion. Thus chapters 7–12, §§ 53–92, really form a separate treatise on the rewards of a good king and are placed somewhat awkwardly, interrupting the overall flow of argumentation. The *De regno* as a whole was combined by an unknown editor with the *De regimine principum* of Ptolemy of Lucca, and the combined work then circulated for centuries under the latter title but sustained as a whole by the authority of Aquinas’s name. For the two works and their respective histories, see the very informative introduction in Eschmann, ed., 1949, ix–xxxix. Eschmann made his revision of Gerald B. Phelan’s English translation only after a careful investigation of the manuscript tradition and the establishment of a corrected Latin text. Unfortunately, he did not print that Latin text, so that while giving my references to his translation, I did so after consulting the Latin text

- reprinted under the title, *De regimine principum: ad regem Cypri*, in d'Entrèves, 1959, 2–83.
60. *De regno*, Lib. I, cap. 1, § 4; ed. d'Entrèves, 1959, 2–3; trans. Eschmann, 1949, 4.
61. *De regno*, Lib. II, cap. 3 (alternatively, Lib. I, cap. 14), § 106; ed. d'Entrèves, 1959, 10–15; trans. Eschmann, 1949, 12–13. Cf. *ST* 1a pars, qu. 103, art. 3; ed. d'Entrèves, 1959, 106–7.
62. *De regno*, Lib. I, cap. 2 and 3, §§ 12 and 21; ed. d'Entrèves, 1959, 10–15; trans. Eschmann, 1949, 12–13. Cf. *ST* 1a pars, qu. 103, art. 3; ed. d'Entrèves, 1959, 106–7.
63. *De regno*, Lib. I, cap. 2, § 19; ed. d'Entrèves, 1959, 10–13; trans. Eschmann, 1949, 12.
64. See Oakley, 2010, 83–110.
65. *De regno*, Lib. I, cap. 1, §§ 13 and 14; II, cap. 1 and 3 (alternatively, I, cap. 12 and 14), §§ 94–95, 102; ed. d'Entrèves, 1959, 6–9, 66–67, 72–73; trans. Eschmann, 1949, 9–10, 53–54, 58.
66. *ST* 2a 2ae, qu. 104, art. 1 *resp.*, art. 6 *resp.*; ed. d'Entrèves, 1959, 175–79.
67. *ST* 2a 2ae, qu. 104, art. 6, reply *ad 3um*; ed. d'Entrèves, 1959, 178–79.
68. *De regno*, Lib. I, cap. 1, §§ 10 and 13; ed. d'Entrèves, 1959, 6–7 and 8–9; trans. Eschmann, 1949, 7 and 9.
69. See above ch. 4.
70. *ST* 1a 2ae, qu. 90, art. 1 *ad 3um*, and qu. 96, art. 5 *ad 3um*; ed. d'Entrèves, 1959, 110–11, 138–41. For the *lex digna*/*Digna vox*, see above, ch. 4. “The *vis directiva*, the *regula rationis*,” d'Entrèves reminds us (ibid., xxviii), “are nothing else than the expression of that natural order of justice which limits the sovereignty of the particular state.” Cf. Carlyle and Carlyle, 1903–36, 5:475–76, appendix 1.
71. *De regno*, Lib. I, cap. 6; ed. d'Entrèves, 1959, 28–35; trans. Eschmann, 1949, 24–28. On the matter of the public authority in question, see *ST* 1a 2ae, qu. 90, art. 3 *resp.*; ed. d'Entrèves, 1959, 110–11, where he says that the ordering of things to the common good “is the task either of the whole community or of *some one person who represents it [alicujus gerentis vicem totius multitudinis]*” (italics mine). What is meant here is not altogether clear, but we will return to the matter below, at the beginning of ch. 6. Note that in his earlier *Commentary on the Sentences of Peter Lombard*, however, Aquinas had envisaged the legitimacy of tyrannicide in the case of a tyrant who had seized power and where recourse to a superior authority was not available. See *Sent.* II, dist. 44, qu. 2, art. 2; ed. d'Entrèves, 1959, 180–85.
72. *De regno*, Lib. I, cap. 6, § 42; ed. d'Entrèves, 1959, 28–29; trans. Eschmann, 1949, 24.
73. *De regno*, Lib. I, cap. 6, §§ 41–42; ed. d'Entrèves, 1959, 28–29; trans.

- Eschmann, 1949, 23–24.
74. Carlyle and Carlyle, 1903–36, 5:93–97.
75. *ST* 1a 2ae, qu. 105, art. 1 *resp.* and arg. *ad 2um*; also qu. 95, art. 4 *resp.*; ed. d'Entrèves, 1959, 148–51, 130–33.
76. For the former, see McIlwain, 1932, 329–33; for the latter, Gilby, 1958, 294. For the conclusion that Aquinas appears to settle on no coherent theory on the matter, see Myers and Wolfram, 1982. But for a careful and balanced analysis in which I basically concur, see Blythe, 1992, 39–59. Similarly, Tierney, 1979, 1–8.
77. For his wider deployment of the notion, see Eschmann, 1944, 62–100, who sees it as compatible with his “theologische Personalismus.”
78. The words are those of d'Entrèves, 1959, xviii, and Morrall, 1958, 76.
79. In order of citation: *ST* 1a 2ae, qu. 81, art. 1: “secundum quod in civilibus omnes qui sunt unius communitatis, reputantur quasi unum corpus, et tota communitas unus homo”; ed. Gilby, 1964–76, *ST* 2a 2ae, qu. 58, art. 5 *resp.* and art. 7 *ad 2um*; ed. d'Entrèves, 1959, 28–29; (cf. *ST* 1a 2ae, qu. 90, art. 3 *ad 3um*: “bonum unius hominis non est ultimus finis, sed ordinatur ad bonum commune,” *ibid.*, 112–13). *De regno*, Lib. I, cap. 9; ed. d'Entrèves, 1959, 48; trans. Eschmann, 1949, 40.
80. *ST* 1a pars, qu. 103, art. 3; ed. d'Entrèves, 1959, 106–7. The sentence goes: “Illud autem quod est *per se unum*; potest convenientius et melius esse causa unitatis quam *multi uniti*” (italics mine).
81. *Commentum in X libros Ethicorum ad Nicomachum*, Lib. I, lectio 1; ed. d'Entrèves, 1959, 190–93.
82. *De regno*, Lib. II, cap. 3, § 107 (alternatively Lib. I, cap. 14); ed. d'Entrèves, 1959, 74–75; trans. Eschmann, 1949, 40 (“oportet eundem finem esse multitudinis humanae qui est hominis unius”).
83. D'Entrèves, 1959, xix: “The integration of the individual in the whole,” he adds, must be conceived as an “enlargement and enrichment of his personality, not as a degradation to the mere functioning of a part without a value of its own.”
84. Tierney, 1997, 45. It is true, however, that over the years more than one Thomist sympathizer has attributed such a theory to him—e.g., Maritain, 1942; Finnis, 1998, esp. 132–38, 183–209.
85. *ST* 2a 2ae, qu. 104, art. 6 *ad 3um*; ed. d'Entrèves, 1959, 178–79. Cf. 1a 2ae, qu. 93, art. 3 *ad 2um*, and qu. 95, art. 2 *resp.* (*ibid.*, 120–21 and 128–29), where he affirms that “if a human law is at variance in any particular with the natural law, it is no longer legal but a corruption of law.”
86. *ST* 1a 2ae, qu. 93, art. 3 *ad 2um*; ed. d'Entrèves, 1959, 120–21.
87. See Oakley, 2010, 6–7.
88. Foster, 1942, 256 (italics mine). In what follows, I have been much influenced by Foster’s lucid, if barebones, analysis.

89. *De regno*, Lib. II, cap. 3 (alternatively, Lib. I, cap. 14); ed. d'Entrèves, 1959, 72–73; trans. Eschmann, 1949, 58–59.
90. Thus Eschmann, 1997, 87.
91. *ST* 1a 2ae, qu. 100, art. 9 *resp.*; ed. d'Entrèves, 1959, 146–47. Cf. the pertinent comment of Eschmann, 1997, 216, to the effect that “a lawmaker can only make us perform *virtuous acts* (extrinsic), he cannot force us to *act virtuously* (intrinsic).” Or, again, 153: “Aquinas interiorizes morality. The intention not what you do is the moral thing.” In making this basic point, Aquinas cites Aristotle’s *Nicomachean Ethics*, II, 4, 1105 a–b, but while doing so inserts into the argument what is in fact a novel stress on will and intentionality. Cf. the illuminating comment which Adkins, 1960, 334ff., makes on the Aristotelian text in question, and his warning to the effect that we should not permit ourselves to be misled by the seeming “modernity” of Aristotle’s words into thinking that they express an adequate sense of moral responsibility. There is also a fine discussion of the Christian preoccupation with will, intention, and duty and its gradual transformation of the ancient Greek ethics in Gilson, 1950, 343–63.
92. *De regno*, Lib. II, cap. 3 (alternatively, Lib. I, cap. 14); ed. d'Entrèves, 1959, 74–77; trans. Eschmann, 1949, 60–62.
93. This last point Aquinas makes in his early *Commentum in Quatuor Libros Sententiarum*, II, dist. 44, qu. 3, art. 4 (ed. d'Entrèves, 1959, 185–87), where he says that in the pope “the spiritual and the temporal power are identified in one person, . . . whose power is supreme in matters both temporal and spiritual, through the dispensation of Him Who is both priest and king; a Priest for ever according to the order of Melchisedech, the King of kings and Lord of lords.” Cf. the pertinent remarks in *ST* 2a 2ae, qu. 60, art. 6 *ad 3um*, qu. 67, art. 1 *ad 2um*, and qu. 147, art. 3 *resp.*; ed. d'Entrèves, 1959, 166–67.
94. In coming to terms with this particular work, I have found especially helpful McIlwain, 1932, Berges, 1938, Lambertini, 1951, Dunbabin, 1988, Blythe, 1992, Briggs, 1999, and Dyson, 2003, 144–65. Born of a prominent Roman family, Aegidius became a member of the Hermits of St. Augustin and eventually the prior-general of that order. He served for a time as tutor to the sons of Philip III of France and while playing that role wrote the *De regimine principum*, which he dedicated to the new king Philip IV. We will return in chapter 8, below, to the high papalist position set forth in his later work, the *De ecclesiastica potestate* (1301).
95. Dunbabin, 1988, 484–85; Briggs, 1999, 4, 62, 71–73.
96. There is no modern or critical edition of the original Latin text. The most recent printed edition appears to have been that of 1607, now, since 1967, conveniently available in photographic reprint. I give my references to that edition.
97. Berges, 1938, 211.

98. Briggs, 1999, 70.
99. Berges, 1938, 326.
100. *De regimine principum* (referred to henceforth as *DRP*), Lib. III, 3, cap. 16, 20, 23; ed. 1607, 598–601, 610–13, 620–24.
101. *DRP*, Lib. II, pars 2, cap. 8; ed. 1607, 306–10: “omnes legistae sunt quasi quidam idiotae politici.” John of Trevisa’s Middle English version renders the reference to those wretched lawyers as “ydyote politici, lewed maad and nyse politici”; ed. Fowler, Briggs, and Remley (1997), 224.
102. Thus *DRP*, Lib. I, pars 2, 3 and 4; ed. 1607, 43–213. Cf. Briggs, 1999, 11.
103. Aristotle, *Politics*, I, ch. 1, § 1252a; ed. Barker, 1948, 1. For the currency of that tripartite Aristotelian classification in the twelfth and thirteenth centuries, see Nederman, 1991, 179–87.
104. Lambertini, 1951, 237–79 (at 279).
105. Briggs, 1999, 14–15, 92, 147–48.
106. Dyson, 2003, 147.
107. Though Blythe, 1992, 66, suggests tentatively (and not very persuasively) that Aegidius “cannot completely rid himself of the Augustinian idea” that political rule “is always servitude and exists only on account of sin.” In general, and presumably with an eye to Aegidius’s later and much less “Aristotelian” treatise, he seeks (74) to position him in the *De regimine principum* as an author who “is trying to impose an Aristotelian vision of Politics on an underlying Augustinian outlook.”
108. *DRP*, Lib. III, pars 2, cap. 7; ed. 1607, referring on this to the first book of Aristotle’s *Politics*. Cf. *Politics*, I, 4–7, §§ 1253b–1255b; ed. Barker, 1948, 8–18.
109. *DRP*, Lib. II, pars 1, cap. 2; ed. 1607, 405: “ad bene vivere, ut ad vivere secundum leges et virtuose”; “ad sufficienter vivere, et ad virtuose vivere.”
110. *DRP*, Lib. III, pars 1, cap. 3; ed. 1607, 406–7.
111. The more so in that in Lib. III, pars 2, cap. 30; ed. 1607, 353–57 (an exceptional chapter), Aegidius argues that beyond natural and human law, men need “the law of the Gospel and of God (*legem evangelicam et divinam*).” That divine law provides the certainty that is not provided by the variability of human law. Unlike human law it extends, moreover, to inward disposition and not to external need alone. While natural and human law do help us to attain to what is naturally good, unlike divine law they cannot guide us to the supernatural end to which we are ordained.
112. *DRP*, Lib. III, pars 2, cap. 3 and 4; ed. 1607, 456–60.
113. He does so more than once. See *DRP*, Lib. III, pars 2, cap. 2 and 12; ed. 1607, 453–55 and 482–83. In the second chapter (at 455) he illustrates Aristotle’s “rulership by many” by referring to the constitutional forms prevailing in the Italian communes of his own day.
114. *DRP*, Lib. III, pars 2, cap. 3; ed. 1607, 456–58. Cf. Lib. II, pars 1, cap. 14;



ed. 1607, 259, where, alluding to man as a *minor mundus*, he speaks of the rulership of the individual “by intellect and reason.”

115. It is “a quasi natural *dominium*,” “*nam consuetudo est quasi altera natura*.”—*DRP*, Lib. III, pars 2, cap. 5; ed. 1607, 461–65 (at 463).
116. *DRP*, Lib. III, pars 2, cap. 3; ed. 1607, 456–58. Cf. Lib. II, pars 1, cap. 14; ed. 1607, 259, where, alluding to man as a *minor mundus*, he speaks of the rulership of the individual “by intellect and reason.” In what follows I am indebted to the careful analysis in Blythe, 1992, 63–67.
117. *DRP*, Lib. II, pars 1, cap. 6; ed. 1607, 233–37.
118. *DRP*, Lib. II, pars 1, cap. 14; ed. 1607, 259–62 (at 260: “*Civitas autem in duplici regimine regi potest, politice scilicet et regale*”).
119. *DRP*, Lib. II, pars 1, cap. 14; ed. 1607, 259–62. Cf. Lib. II, pars 2, cap. 3; ed. 1607, 291–93. Applied to a political community the latter sort of regimen would constitute tyranny, a perverted form of government. In this connection, Blythe, 1992, 65, comments that “like Aristotle, but unlike Thomas [Aquinas], Giles argues often and consistently that,” because of a lack of intelligence among those who are by nature cast in the role of servant, “despotic rule promotes the common good of both master and servant.” See, e.g., *DRP*, Lib. II, pars 1, cap. 5; ed. 1607, 230.
120. *DRP*, Lib. II, pars 2, cap. 3; ed. 1607, 291–93.
121. *DRP*, Lib. II, pars 1, cap. 14 and cap. 5; ed. 1607, 259–62, 229–32.
122. *DRP*, Lib. III, pars 2, cap. 35; ed. 1607, 350–51.
123. *DRP*, Lib. III, pars 2, cap. 15; ed. 1607, 493.
124. *DRP*, Lib. III, pars 2, cap. 8; ed. 1607, 471.
125. *DRP*, Lib. III, pars 2, cap. 1, 6, 7 and 24; ed. 1607, 451–53, 466–67, 468–71, 517–20.
126. *DRP*, Lib. III, pars 2, cap. 27; ed. 1607, 526.
127. *DRP*, Lib. III, pars 2, cap. 24–30, esp. cap. 24 and 25; ed. 1607, 517–37.
128. *DRP*, Lib. III, pars 2, cap. 24; ed. 1607, 517–20.
129. *DRP*, Lib. III, pars 2, cap. 26; ed. 1607, 524–26.
130. *DRP*, Lib. III, pars 2, cap. 25; ed. 1607, 525: “*Jus ergo gentium est quoddam jus naturale contractum*.” Though he does not mention it when proposing his fourfold classification, Aegidius does evoke later on what is, in effect, a fifth and additional category—namely, divine law or “the law of the Gospel and of God.” See above n. 111.
131. *DRP*, Lib. III, pars 2, cap. 24; ed. 1607, 519.
132. *DRP*, Lib. III, pars 2, cap. 29; ed. 1607, 532.
133. *DRP*, Lib. I, pars 2, cap. 12; ed. 1607, 79–80.
134. *DRP*, Lib. III, pars 2, cap. 29; ed. 1607, 533.
135. *DRP*, Lib. III, pars 2, cap. 4 and 7; cf. Lib. I, pars 3, cap. 3; ed. 1607, 460 and 468–69, cf. 160.

136. In that work, and in contrast to his position in the *De regimine principum*, he assumed the grounding of political authority in the consent of the governed. See his *De renunciatione papae*, 16:1; cited from Carlyle and Carlyle, 1903–36, 5:77.
137. *DRP*, Lib. III, pars 2, cap. 34; ed. 1607, 549–50.
138. See Oakley, 2010, 177–99.
139. Blythe, 1992, 76, suggests that in *DRP*, Lib. III, pars 2, cap. 13, Aegidius comes close to an outright critique of the mixed constitution. And Carlyle and Carlyle, 1903–36, 5:76, claim that “with Egidius... we come to the beginning of that conception of monarchy which was to be developed in the sixteenth and seventeenth centuries.”
140. McIlwain, 1932, 259.
141. See below, ch. 8.
142. Dyson, ed., 2009, xxxiii–iv and xxiii. Arquillière, 1926, entitles his own edition of the treatise *Le plus ancien traité de l'Église*, and Ullmann, 1977, 144, calls it “the first systematic exposition of the concept of the Church.”
143. Dyson, ed., 2009, xvi.
144. Though that cannot be said of Arquillière, 1926, 34–35, who, while he characterizes as “un peu artificiel” the enlarged meaning which James had to give to the word *rex* in order to apply it to the pope, also insists that James made that application to the pope “sans métaphore.”
145. James explicitly addressed Christ’s statement (John 18:6) “My kingdom is not of this world” and sought to explain it away by arguing that “Christ was appointed king as much in temporal things as in spiritual, but that while He lived on earth He declined to administer the temporal affairs of an earthly kingdom.”—*De regimine christiano* (referred to henceforth as *DRC*), Pt. 2, cap. 10; ed. Dyson, 2009, 296–97.
146. See below, chs. 7 and 8.
147. Though each, of course, in his own distinctive fashion. See Oakley, 2010, 89–98, 165–76.
148. *DRC*, Pt. 1, cap. 1; ed. Dyson, 2009, 6–7, 16–17. As the second passage makes clear, he uses the terms *regnum ecclesiae* and *regnum ecclesiasticum* interchangeably, whether he is speaking of the Church Triumphant enjoying in heaven the vision of God or the Church Militant which lives “in faith while on pilgrimage on earth.”
149. My references to the *De regimine christiano* are given to R. W. Dyson’s new critical edition of the Latin text and to the English translation printed on facing pages. See Dyson, 2009. In this edition, Part 1 of the tract runs from 7–83, Part 2 from 83–327. Arquillière, 1926, also prints an edition of the Latin text.
150. *DRC*, Pt. 1, cap. 1; ed. Dyson, 2009, 8–9.
151. *DRC*, Pt. 1, cap. 1; ed. Dyson, 2009, 10–13. “The community is more

perfect,” he says, “which is ordered to the greater good, and a good is greater in proportion as it is more common.”

152. He unfolds the implications of these four marks of the church in *DRC*, Pt. 1, cap. 3–6; ed. Dyson, 2009, 28–29.
153. *DRC*, Pt. 1, cap. 1, ed. Dyson, 2009, 12–13.
154. “Those things are best that are according to nature,” for “the work of nature is the work of God, Whose works are perfect and best.” But “all natural government is by one.... That which is according to grace does not go against that which is according to nature but perfects it. It follows, therefore, that there is one ruler in the Church.”—*DRC*, Pt. 2, cap. 5, cf. cap. 31; ed. Dyson, 2009, 182–83, cf. 130–31, where James argues that the nature of man is inclined to royal power.
155. *DRC*, Pt. 2, cap. 7; ed. Dyson, 2009, 210–11.
156. *Ibid.*
157. *DRC*, Pt. 1, cap. 1; ed. Dyson, 2009, 16–19, where he adds that “the church herself is called the kingdom of heaven because she orders and directs the faithful towards the heavenly goods that are sought in her as an end.”
158. Arquillière, 1955. See also Oakley, 2010, 117–42 (esp. 141), where I affirm that this medieval form of Augustinianism was in fact a departure from Augustine’s own mature and controlling political vision. It broke down the firm distinction he had drawn in all but a handful of texts in the *De civitate dei* between the City of God/Kingdom of Christ and the Christian societies of this world. Instead, and in the teeth of what he actually had had to say about justice and the commonwealth, it understood him as having asserted that it is the glorious destiny of Christian society—in James of Viterbo’s terms the *regnum ecclesiae*—to labor to vindicate the reign of *vera justitia* in this world.
159. *DRC*, Pt. 2, cap. 1; ed. Dyson, 2009, 82–89.
160. *DRC*, Pt. 2, cap. 1, ed. Dyson, 2009, 108–9, so that, he adds, “the sword which goes forth from his mouth is sharp on both edges. For this one sword is His one royal power, which nevertheless has two edges, for the government of heavenly and earthly things. He did not, however, wish to administer a temporal kingdom while he was sojourning with men in this mortal life.” Cf. *DRC*, Pt. 2, cap. 10; ed. Dyson, 2009, 296–97. See above, n. 145.
161. Hebrews 1:8, quoting Psalm 44:7, one of the “royal psalms” addressed originally to the Hebrew kings. On which, see Oakley, 2010, 44–47.
162. *DRC*, Pt. 2, cap. 1; ed. Dyson, 2009, 94–95: “It belongs to Christ to be a priest, as also a mediator according to his human nature only, whereas it belongs to Him to be a king, as also a head, according to both his divine and human nature.” Cf. *ibid.*, cap. 4, 164–65.
163. *DRC*, Pt. 2, cap. 4; ed. Dyson, 2009, 164–65. In this, James is at one with

the twelfth-century Anglo-Norman Anonymous and for much the same christological reasons. See Oakley, 2010, 165–76.

164. For this distinction and the further subdivision of the power of jurisdiction alluded to below, see *Dictionnaire de droit canonique*, 1935–65, 7: 98–100 s.v. “Pouvoirs de l’Église.”
165. *DRC*, Pt. 2, cap. 2 and 3; ed. Dyson, 2009, 116–17, 121–23.
166. *DRC*, Pt. 2, cap. 2; ed. Dyson, 2009, 114–15.
167. *DRC*, Pt. 2, cap. 3; ed. Dyson, 2009, 124–25. “For,” he says, “a kind of priesthood came about by human institution... under the law of nature before the time of the written law.” “Because the natural law says that God is to be worshipped and that sacrifices and offerings are to be made to Him.”
168. *DRC*, Pt. 2, cap. 3; ed. Dyson, 2009, 124–29.
169. *DRC*, Pt. 2, cap. 3; ed. Dyson, 2009, 134–35.
170. *DRC*, Pt. 2, cap. 4; ed. Dyson, 2009, 148–51.
171. *DRC*, Pt. 2, cap. 4; ed. Dyson, 2009, 154–61. This is part of a somewhat tangled discussion of jurisdictional power, temporal as well as spiritual, that skips chapter 5 but extends through chapters 6 and 7.
172. *DRC*, Pt. 2, cap. 3; ed. Dyson, 2009, 142–45.
173. *DRC*, Pt. 2, cap. 3 and 6; ed. Dyson, 2009, 134–35, 198–201. James concedes (200–201) that in the sense that what pertains to the soul is spiritual in nature, the secular power *could* be called “spiritual,” for “if it is well-ordered, [it] intends as its principal and final purpose to direct and lead subjects to a virtuous life, which pertains principally to the soul.” But the word “spiritual,” he goes on to indicate, more properly denotes “that which pertains to the soul not according to nature but according to grace.” And “grace elevates man above temporal things and causes him to share in eternity.” “Taking ‘spiritual’ in this sense, therefore, temporal power is not called spiritual but corporeal because, as such, it has to do with nature.”
174. *DRC*, Pt. 2, cap. 4 and 8; ed. Dyson, 2009, 159, 231, 234–35, 238–39.
175. *DRC*, Pt. 2, cap. 7; ed. Dyson, 2009, 216–17. Cf. *ibid.*, 208–9, where he speaks of the spiritual power as being “the cause of the temporal in the mode of an end, for the end of the temporal power, which is natural felicity, is ordered to the end of the spiritual, which is supernatural blessedness, and so the temporal power exists for the end of the spiritual.”
176. *DRC*, Pt. 2, cap. 7; ed. Dyson, 2009, 210–11, again citing the dictum “that which is of grace does not abolish that which is of nature, but forms and perfects it.”
177. *DRC*, Pt. 2, cap. 7 and 8; ed. Dyson, 2009, 230–31, 234–35.
178. *Ibid.*, 215, 238–39.
179. For which, see Oakley, 1968, and Oakley, 1972.

180. See Oakley, 1984, 89–92.
181. *DRC*, Pt. 2, cap. 8; ed. Dyson, 2009, 239. Dyson translates *de communi lege* as “in the ordinary way” and *de lege speciali* as “in special circumstances.” While it does not betray the meaning of the Latin, that particular rendering into English does serve to conceal from the reader the fact that James is referring obliquely here (in related technical terminology) to the theological distinction between God’s absolute and ordained power (*potentia dei absoluta et ordinata*) which the great thirteenth-century decretalist Hostiensis had already applied by analogy to the pope. For a discussion of this move and of the significance of the distinction itself, see below ch. 7.
182. *DRC*, Pt. 2, cap. 5 and 3; ed. Dyson, 2009, 174–75, 170–71, 135–41 (the pages given in order of citation).
183. In order of citation: *DRC*, Pt. 2, cap. 4, 10, 9, 5; ed. Dyson, 2009, 158–59, 322–23, 270–71, 174–75. Thus James subscribes to the “derivational” theory of jurisdiction that came very much to the fore in the wake of the secular-mendicant controversy at the University of Paris in the 1250s. For which, see below, ch. 7.
184. *DRC*, Pt. 2, cap. 9; ed. Dyson, 2009, 262–63, 132–33.
185. *DRC*, Pt. 2, cap. 10; ed. Dyson, 2009, 294–95.
186. *DRC*, Pt. 2, cap. 7 in general; ed. Dyson, 2009, 207–29. Words cited occur at 218–19, 214–17.
187. Of James of Viterbo, the Aegidius Romanus of the *De ecclesiastica potestate*, and John of Paris (see below, ch. 8), Canning, 1996, 147, properly remarks that the treatise of all three “amounted to a new genre for the Middle Ages, in that they were not mirrors of princes but works of synthesis focused on specific themes, and in particular that of power.”
188. Thus Watt, 1988, 400.
189. E.g., *ST* 2a 2ae, qu. 10, art. 10; ed. d'Entrèves, 1959, 154–55, where he says: “The divine law, which stems from grace, does not abolish human law which is founded upon natural reason.”
190. *Metaphysics*, XII, 7, 1072b; in Ross, ed., 1908–52, VIII, 1072b, 17–18. For the doctrine of the unmoved mover, see esp. *Metaph.*, XII, 6–10, 1071b–1076a, and *Physics*, VIII, 5, 9–10, 256a–258b, 265a–267b. For some helpful comments on *Metaph.* XII, 8, and the issue of the plurality of unmoved movers, see Collingwood, 1945, 80–91.
191. I have in mind here Aristotle’s teaching that the unmoved mover, the ultimate final cause and therefore the highest good, while it transcends the universe is also immanent in it “as the order of its parts.”—*Metaph.* XII, 10; in Ross, ed., 1908–52, VIII, 1075a, 10–25. Also *ibid.*, XII, 8, 1074b, 1–15, where he characterizes as “inspired” the old myth that the first substances “are gods and that the divine encloses the whole of nature.” See the pertinent remarks of Collingwood, 1945, 88–89, and Lloyd, 1968, 157–58.

For the general perspective from which these remarks are framed, see O'Connor and Oakley, 1969, 1–12.

192. For the notion of the supernatural and the late date at which the word *supernaturalis* itself emerged during the Christian era, see de Lubac, 1946, 325–438, and now Bartlett, 2008, esp. 12–32, where he confirms de Lubac's claim that the word only became at all common in the thirteenth century, and comments (27) on “the contraction of the sphere of the supernatural” in the later medieval centuries.
193. On this point and in what follows, I am indebted to Foster, 1942, 238–64, and Eschmann, 1997, 155, 216.

## Chapter 6. Proto-Constitutionalist Innovation

1. The phrase is that of Arthur O. Lovejoy, 1940, 23.
2. On this point, the observation made by Lewis, 1954, 1:245 is apposite: “A good deal of medieval political writing seems often to have been quite oblivious of medieval political fact and, on the other hand, many of the concepts of the ancient *polis* and the ancient empire were unrecognizably distorted in the attempt to fit them to medieval institutions.”
3. The clearest statement is that made by Aegidius Romanus—not, however, in his *De regimine principum* but in the later *De renuntiatione papae*.
4. For which see Barker, 1913. The texts in Aquinas usually cited as “consent texts” are *ST* 1a 2ae, qu. 90, art. 3, 2a 2ae, qu. 57, art. 2, and *In quatuor libros Sententiarum*, II, dist. 44, qu. 2, art. 2; ed. d'Entrèves, 1959, 110–11, 162–63, 182–85.
5. Walsh, 1929, 391; cf. 375 and 388.
6. Rager, 1926, 10–11.
7. Rahilly, 1919, 209. Cf. Ryan and Millar, 1922, 114–20, 134–37, 160–65, 172–77 (esp. 174).
8. Gierke, 1939, esp. 91–240; Figgis, 1960, esp. 41–70; McIlwain, 1958, esp. 67–122; Carlyle and Carlyle, 1903–36, esp. 5:457–74; Laski, 1936, 638; Gough, 1936; Sabine, 1937, esp. 313–26; Lecler, 1935, 5–26, 168–92.
9. Ullmann, 1966a, 150–51; cf. 96–97.
10. For a general attempt to assess from such a perspective the historical significance of the European Middle Ages, see Oakley, 1974. See also, with specific reference to modern Western political thinking, Oakley, 2010, ix–xiii, 1–10.
11. D'Entrèves, 1967, 1–11, where the citations which follow occur; cf. 141–49. For the distinctions between *Macht*, *Herrschaft*, and *legitime Herrschaft*, which d'Entrèves notes (10–11) are closely related to his own though not identical with them, see Weber, 1947, esp. 152–53.
12. Hobbes, *Leviathan*, pt. 2, ch. 2; ed. Oakeshott, 1946, 141. Cf. Pateman,

1979, 6: “Liberal theory, and its conception of self-assumed obligation, was born in conflict with divine right and patriarchalist theorists who insisted that relationships of subordination and authority were God-given or natural. It is absolutely basic to liberal theory that political authority is conventional. The conception of political ‘obligation’ as a relationship that individuals voluntarily take upon themselves—and so can refuse, reject or change—makes no sense outside of a conventionalist view of at least a large number of human relationships and, most-especially, of political relationships.”

13. Though such comparisons would undoubtedly sustain the point being made. See Oakley, 2006a, 1–43.
14. For which, see Oakley, 2010, 1–10. Or put in slightly different terms, the classical Greek way of thinking about politics projected an “ethics of virtue” rather than an “ethics of obligation.” See Salkever, 1974, 78–92.
15. Behind this political speculation lay an epistemology in accordance with which the individual was regarded as apprehensible by the intellect only insofar as it was a “particular”—that is, a participation in a universal, eternal archetype. Behind it also, though at a further remove, lay a psychology that, lacking a clearly differentiated concept of individual personality, saw no sharply defined boundaries between the self and the collectivity to which it belonged. For these points, see the essays by Daniel O'Connor, Emil Brunner, Erich Franck, and Hans Jonas in O'Connor and Oakley, 1969, 105–56 and 241–58 (stressing the fundamental interrelationship persisting among the shifting notions of time, personality, will, freedom, and responsibility. Also the classic study of Bruno Snell, 1953, and a fine work which shares something of Snell’s perspective—Adkins, 1960. Cf. Oakley, 2010, 1–10.
16. Thus Jefferson could speak of it as expressing the “harmonizing sentiments of the day” and of “the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, etc.,” as placing “before mankind the common sense of the subject in terms so plain and firm as to command their assent.”—Letter to Lee in 1825; see *Works of Thomas Jefferson*, ed. Washington, 1884, 7:407.
17. Patrick Riley explores the ramifications of this point in a notable series of articles, now gathered together in Riley, 1982. See also Pateman, 1979, 1–4; Lukes, 1973, esp. 73–87; Berlin, 1969, esp. 127–29.
18. In the course of their monumental *History of Medieval Political Theory*, 1903–36, Carlyle and Carlyle do in effect contrive to touch upon all these bases. See especially the summary at the end of 5:457–74. Similarly, Lecler, 1935, touches upon most of them.
19. Thus James Otis declared that “the present civil constitution of England derives its original from those Saxons who... established a form of government in [England] similar to that they had been accustomed to live



- under in their native country.... This government, like that from whence they came, was founded upon principles of the most perfect liberty.”—*Rights of the British Colonies* (John Harvard Library, 7, 31) as cited in Bailyn, 1992, 80. Cf. Colbourn, 1965, 21–39. For the English background to this view, see Hill, 1958, 50–122, and Pocock, 1957, 30–70. If the American colonists tended to equate such English consensual constitutional arrangements with the *natural* order of things, some of their English predecessors had done likewise (see Hill, 1958, 55).
20. E.g., in Walter Ullmann’s several discussions of what he called the “ascending” or “populist” thesis of government and law. On which, see Oakley, 1973, 7–9, 16–21, 27–32. The old “democratic” interpretation of the ancient Germanic and Scandinavian kingship also finds some echoes in Kummer, 1959, 716–33, and Baetke, 1964.
  21. For this whole issue and the pertinent scholarly literature, see Oakley, 2010, 143–51.
  22. Citing here, Chaney, 1970, 15.
  23. *Ibid.*, 16.
  24. See H. M. Chadwick, 1926; Dumézil, 1939, 41–43; De Vries, 1950, 298; Höfler, 1956, 692–96; Wallace-Hadrill, 1971, 8–16; Schlesinger, 1956, 140.
  25. Höfler, 1956, 694—an extreme formulation, admittedly, but also illuminating.
  26. See above, ch. 4.
  27. Wirszubski, 1950, 17–22, 31–40, 47–50. Note the four forms that these assemblies could take: the *comitia curiata*, the *comitia centuriata*, the *comitia tributa*, and the *concilium plebis*—each with its own principle of organization. See Taylor, 1966, esp. the helpful diagram facing 5, and the older study by Botsford, 1909.
  28. On which, see Dumézil, 1939, 1:206. Note, by way of analogy, that in order to be valid a *senatus consultum* had to be held in a temple. *Ibid.*, 1:316.
  29. Taylor, 1966, esp. 1–14, 61–64; Botsford, 1909, 155–56; Jolowicz, 1932, 17–18; Schulz, 1946, 14–22; Kunkel, 1966, 9–14. On the office of *rex sacrorum*, Kunkel (13–14) has the following pertinent comment to make: “This was not a new office, different from the kingship, but was the old kingship itself, for as long as a Roman state cult remained it continued to exist in its sacral function because only a king possessed the necessary magic power.... A special, partly religious, partly magical charisma, similar to the old Germanic *Königsheil*, was... the basis of the kingly power, and the sacral function of the king was originally just as essential as his political and military functions, with which it was indissolubly connected.”
  30. Jolowicz, 1932, 370–71; Kunkel, 1966, 119, where he characterizes as “the purest fiction” Ulpian’s view (*Digest* 1, 4, 1) that “the emperor himself

received his power from the Roman people through the *lex de imperio*, and that his decrees therefore rested at least indirectly on the popular will.” For the *lex regia/lex de imperio*, see above, ch. 4.

31. D'Entrèves, 1967, 78.
32. Ways that were sometimes conflicting. Thus Ullmann, 1949, 103, claims that whereas the civilians argued that by the *lex regia* “the people had transferred all power to the emperor and that this transfer was irrevocable” the canonists usually regarded the transfer merely as a revocable concession. At the same time, some of the Decretists also applied the idea of the *lex regia* to the pope, but apparently with the object of enhancing rather than diminishing his authority; see Tierney, 1955, 55–56.
33. Though the surviving evidence for the evolution of consensual institutional practices in those city-states during the twelfth and thirteenth centuries is, unfortunately, no more than fragmentary in nature. See Waley, 1969.
34. *Tractatus de regimine civitatis*, §§ 15–20; in Bartolus of Sassoferrato, *Opera omnia*, 1588–89, 10:417–20. Cf. the discussions of Bartolus’s advocacy of “popular sovereignty” in Woolf, 1913, 174–80; Ullmann, 1962, 2:705–33; Skinner, 1978, 1:61–65, 2:181–84. Keen, 1965, 105–26, gives a lucid general introduction to the political thinking of the postglossators.
35. Ullmann, 1962, esp. 714–22.
36. *Defensor pacis*, I, 12, 3; ed. Previté-Orton, 1928, 49, where Marsiglio adduces the authority of Aristotle, *Politics*, III, ch. 11, 1281a–b (trans. Barker, 1948, 123–25). I will address such republican theories in the third volume of this series. In the meantime, for a brief comment on Marsiglio’s use (and abuse) of Aristotle in this connection, see Oakley, 1973, 40–42.
37. While making this claim, I should acknowledge the fact that Blockmans, 1995–2005, who emphasizes the sheer variety of representative arrangement in late medieval Europe, is at pains to insist (61–63) that “fundamentally, there existed two ways by which representation was initiated: on behalf of monarchies in need of political and material support, and as a spontaneous action of communities defending their collective interests.” In the latter case, he notes, “representation was from the bottom up, largely [in the urban and rural communes] on an informal basis, in most cases at least partially autonomous from monarchical power.”
38. Tierney, 1982, 15–19; Oakley, 2003. This issue, which came to maturity only in the late fourteenth and fifteenth centuries, I propose to address in the third volume of this series.
39. Tierney, 1982, 21, where, commenting on the texts of the early thirteenth-century canonists Huguccio of Pisa and Alanus Anglicus, he says that “in these texts the general council was being treated as a corporate body in a very technical sense.”
40. Hintze, 1929–31, 1–47. Of representative institutions he asserts (4) that

“one faces [here] a phenomenon that is characteristic of the Christian West.” Similarly, Blockmans, 1995–2005, 27, asserts, “Political representation based on the mandate bestowed on elected and responsible delegates, and applied at regional and national levels, can be considered as one of the major contributions of the western Middle Ages to world history.”

41. See above, General Introduction.

42. Oakley, 2010, 177–99.

43. Bloch, 1964, 2:452, where he argued that the “originality” involved “consisted in the emphasis... placed on the idea of an agreement capable of binding the ruler” an agreement open to vindication, if need be, by recourse to legitimate force. And in this connection he cites the words of the *Sachsenspiegel* to the effect that “a man may resist his king and judge when he acts contrary to law and may even help to make war on him.... Thereby, he does not violate the duty of fealty.” Cf. Oakley, 2010, 180–99.

44. Procter, 1980, 105–51.

45. The great tidal wave of interest in the theory and practice of representation in the Middle Ages appears, in retrospect, to have crested by the third quarter of the twentieth century, depositing, as it withdrew, a vast body of scholarly literature. Cam, Marongiu, and Stöckl, 1955, 1:1–110, provides a helpful summation of the contributions made earlier in the century by such leading scholars as Georges de Lagarde, Antonio Marongiu, Otto Brunner, H. M. Cam, Gaines Post, and Émile Lousse, both to our understanding of the political theory of representation and to our knowledge of the actual development of representative institutions in England, France, Germany, Italy, the Netherlands, and the kingdoms of Iberia. There are decent synoptic accounts in Marongiu, 1968, Myers, 1975, Monahan, 1987, and, looking ahead to continuing developments in the fourteenth and fifteenth centuries, Blockmans, 1995–2005, 29–64 (with extensive bibliography at 855–61). For the uniquely western European origins of the phenomenon, the classic essay by Otto Hintze, 1929–31, 229–47, 1–47, which, while criticized on more than one point, still carries great authority. The detailed, technical studies gathered together in Post, 1964a, remain absolutely fundamental for an understanding of the theory of representation, and their findings inform what I have to say here on that matter. See also Congar, 1958, Marongiu, 1946 and 1962, Tierney, 1982.

46. *Digest* 1, 1, 1, 2; cf. *Inst.* 1, 1; ed. Krueger, Mommsen, and Schoell, 1899–1902, 1:1 (*Digest*) and 1:1 (*Institutes*).

47. Post, 1964a, 12–13, notes that in 1228 a glossator added that public law exists “to preserve the state lest it perish.” He also notes that Accursius’s *glossa ordinaria* related *status* to “the public or common utility and safety” and portrayed them as “a higher good than the private.” Thus “kings and popes,” by appealing to the *status regni* or *ecclesiae* or the public welfare,

- were able to demand “a sacrifice of private right and of the law that protected them.”
48. Tierney, 1982, 19, where he adds that if the “medieval canonists influenced the subsequent growth of constitutional ideas,” they did so in two ways. First, “through overt arguments about the relationship between ruler and community”; second, “through their reflections on the technicalities of corporation law.”
  49. Thus *co-tutores* could not terminate their joint administration of the *tutela* without the consent of all, and they could appoint a procurator to represent their interests in court. See Post, 1964a, 168–70. Cf. Buckland, 1975, 161–66.
  50. Post, 1964a, 168–75; cf. Tierney, 1982, 21–25. That is to say, the *quod omnes tangit* principle was interpreted as qualified by the notion of preponderant consent, either by simple majority or two-thirds majority, or by an understanding of the “greater part” as involving not simply a numerical majority but also one qualified by an insistence on the presence of wisdom or quality in what thus became the “greater and wiser part” (*major et sanior pars*). For the history of the rise of that notion to prominence, see Moulin, 1958, 368–97, 491–530. Monahan, 1987, 107 (citing Congar, 1958, a classic article central to an understanding of this whole issue), notes also, and by way of further qualification, that “a useful distinction was soon formulated between what touches all as individuals (*ut singuli*) and what touches all as members of a group (*ut collegiati*). In cases of the former the consent of each individual was required in respect of what touched his individual rights [i.e., personal goods and obligations]. In cases of the latter only the consent of the collegial whole was required, although each individual member of the whole must be able to exercise his rights of membership in the whole, for example, by being summoned to the corporate consideration of the matter and by being able to participate through voting in the group decision, which might then carry by majority vote with the dissenting votes bound by the majority group decision.”
  51. See esp. Tierney, 1982, 21–23.
  52. Tierney, 1982, 21.
  53. Lewis, 1954, 1:201, comments, indeed, that “the central political problem of the later Middle Ages was [to be] the thrashing out of all the implications involved in conceiving the Kingdom and the Church as corporate communities.”
  54. Post, 1964a, 89–90.
  55. Tierney, 1982, 25.
  56. I allude especially to the significant body of work which had been appearing in article form from 1934 onward before being gathered together in Post, 1964a, esp. 3–328. Though Ullmann seems nowhere to have cited these particular studies, in the second edition of his *Principles*, 1966b, 309–

- 10n139, there are a couple of condescending references to a later study of Post's which Ullmann had earlier criticized rather severely in *Historische Zeitschrift* 202, no. 1 (1966): 104–6. The study in question is Post, 1964b, 3–103.
57. See esp., Post, 1964a, 91–102 (“*Plena Potestas* and Consent in Medieval Assemblies: A Study in Romano-Canonical Procedure and the Rise of Representation, 1150–1325”).
  58. Monahan, 1987, 110, helpfully comments that “the theory of summoning and consenting, then, did not reflect a developing notion of the political sovereignty of the people; it reflected a specific instance of the king being bound by the law.” For the king “had been required by private feudal law to consult and obtain the consent of his barons to measures that affected their interests.” What was new “in the thirteenth-century theory of *qoi*” was its extension beyond the ranks of the feudal aristocracy and “the improved specification for how this consent was to be asked for and expressed.”
  59. Thus Post, 1964a, the passages cited being from 180 and 116. The latter passage, focusing on the examples of a royal request for a subsidy on the grounds of necessity or emergency, continues: “The case of necessity was, as it were, tried in the assembly, and the representatives were, in a sense, attorneys protecting the rights and interests of the communities against the royal claim of public utility and binding the communities by their consent to the decision.”
  60. See the comparative accounts by Marongiu, 1968, and Myers, 1975.

## **Chapter 7. Priestly Kings and Royal Popes**

1. But not with great confidence and, it now seems indeed, with growing uncertainty. See Samuel Thorne's introduction to the latter two volumes of his revised version (along with English translation) of the Latin text edited by Woodbine, 1915–42—Thorne, 1968–77, 3:xii–lii. There Thorne makes the novel case that Bracton and others were no more than the revisers in mid-thirteenth century of a work that dated back to the 1220s. The multiple lacunae and confusions in the text (on which see Thorne's “Translator's Introduction” to the first volume—Thorne, 1968–77, 1:xxxix–xl) reflect the fact that the work never underwent a thorough revision.
2. As is evident from the intricate and persistent scholarly disagreements concerning his vision of kingship and its relation to law. Among the most striking contributions to the debate on this issue are Schulz, 1945, Kantorowicz, 1957, 143–92, McIlwain, 1958, Ullmann, 1963, 289–99 (a review article of Fesefeldt, 1962), Tierney, 1963b, Lewis, 1964, Post, 1968. For critical appraisals of the interpretative stances adopted by McIlwain and Ullmann, see Oakley, 1968 and 1973; reprinted in Oakley, 1999, 249–75, 25–72 (at 33–40).

3. Tierney, 1963, 316–17.
4. *De legibus*; ed. and trans. Thorne, 1968–77, 2:33, 166, 305.
5. *Ibid.*, 2:33 and 305.
6. *Ibid.*, 2:33. Cf. the comments of Kantorowicz, 1957, 143–59. See also *De legibus*; ed. and trans. Thorne, 1968–77, 2:305–6, where Bracton adds, citing the *lex digna* (see above, ch. 4) that “it is a saying worthy of the majesty of a ruler that the prince acknowledge himself to be bound by the laws.” This he does not himself view as being incompatible with the other Romanist dictum to the effect that “the will of the prince has the force of law” (see above, ch. 4), but an enormous amount of scholarly disagreement has swirled around his somewhat imprecise and conflicting statements on the matter. On which, see esp. Tierney, 1963.
7. *De legibus*; ed. and trans. Thorne, 1968–77, 305.
8. See above, ch. 5.
9. See above, ch. 2.
10. Bloch, 1973, 113–4; Kantorowicz, 1957, 318–21.
11. Bloch, 1973, 137–38 and 114. For the text of John XXII’s bull, see Legg, ed., 1901, 72: “Tum quia regalis unctio in anima quicquam non imprimit.” Cf. *ibid.*, 66 and 67, for the willingness of Robert Grosseteste, the great bishop of Lincoln, to refer to the anointing of kings as *uncionnis sacramentum* though he is careful to add that it doesn’t confer upon the king any sacerdotal powers.
12. Rufinus, *Summa Decretorum*, 22, qu. 5, cap. 22: “[D]icitur imperatorem non omnino laicum esse, quam per sacram unctionem constat consecratum esse.” Cited from Bloch, 1973, 112.
13. *Gesta Frederici I imperatoris*, Lib. II, cap. 3, ed. Wilmans, 1867, 1:103–104. Trans. Mierow, 1953, 116–17.
14. *Historia de duabus civitatibus*, Prologues to Lib. V and Lib. VII; ed. Wilmans, 1867, 1:217, and 295, where he says “a tempore Theodosii senioris usque ad tempus nostrum non jam de duabus civitatibus, immo de una pene, id est ecclesia, sed permixta historicum texuisse.” Trans. Mierow, 2002, 323–24, 404.
15. For the references to Charles IV and Sigismund, see Bloch, 1973, 118, and for Charles V as deacon, Bertelli, 2001, 14.
16. Cited from Kern, 1939, 38; cf. Kern, 1954, 72–74.
17. Folz, 1969, 87–89, 199–201; cf. Bloch, 1973, 116–17, 199–201, where he reprints the pertinent excerpt from Gervase of Tilbury’s *Otia Imperialia*, Lib. II, cap. 18–19.
18. Folz, 1969, 88. For the *laudes* or acclamations, see Kantorowicz, 1946, 144. Note in contrast the pontifical *laudes*, of which Innocent III was the author and which acclaimed the pope as *a deo decretus*.
19. For which, see Oakley, 2010, 165–76.

20. Matthew Paris, *Chronicle* in *MGH: Scriptorum*, 28:319, where, speaking of the death of Frederick II, he refers to him as “principum maximus Fredericus, stupor quoque mundi et immutator mirabilis.” Kantorowicz, 1957—the whole of chapter 4, “Law-Centered Kingship,” is pertinent to this process. The words cited occur at 185 and 192. Also Folz, 1969, 103, 117–18, where he draws attention to the fact that in a decree promulgated in 1239 Frederick himself, “playing on the symbolic conception of the universe, gave credence to the idea that he was a representation of the Saviour, celebrating his birthplace Jesi as his own Bethlehem.”
21. For the Eusebian tradition, see Oakley, 2010, 89–110.
22. Dante, *De monarchia*, 1:8, 16; 2:8; 3:16; ed. and trans. Shaw, 1995, 18–19, 42–45, 78–85, 144–49.
23. *Dante Aligherii Epistolae*, ed. Toynbee, 1966, 67–68, 77, 87, 90–91, 100–101.
24. Kantorowicz, 1957, 185 and 191.
25. X, 1, 15, c. 1; ed. Friedberg, 1879–81, 2:131–32. Cf. Schramm, 1937, 119–20.
26. Schramm, 1937, 115–40; Bloch, 1973, 115–16.
27. Oakley, 2006, 167–76. Queen Elizabeth’s coronation and consecration struck the sociologists Edward Shils and Michael Young as so obviously an “act of sacralisation” that in a subsequent and celebrated article that raised a few academic eyebrows by declaring the monarchy to have “its roots in man’s belief and sentiments about what he regards as sacred,” they claimed that that whole coronation ceremony “provided at one time and for practically the entire society such an intensive contact with the sacred that we believe we are justified in interpreting it... as a great act of national communion.”—Shils and Young, 1953, and, for a sharp critical response, see Birnbaum, 1955.
28. Bloch, 1924 (English trans., 1973), remains the classic treatment of this strange phenomenon.
29. Bloch, 1924 (English trans., 1973), whose account calls now for a degree of revision in the light of a more recent reassessment of the evidence—see Barlow, 1980.
30. Bloch, 1973, 72.
31. *Ibid.*, 72–73. Speaking of “the long silence of the documents in the face of all the historians’ enquiries,” Bloch (73) attributes it to “the influence of the great eleventh century [Gregorian] revival, which extended its efforts in successive waves, as it were, over the two following centuries.” And he notes further that that influence succeeded in imposing a similar silence “on all contemporary writers, not only on theologians or monastic chroniclers, but also on authors writing in the popular tongue, the troubadours.”
32. Bloch, 1973, 76–77, and for the royal miracle in the French and English



- account books, appendix 5, 244–52.
33. For the so-called second royal miracle, see Bloch, 1973, 92–107.
34. Bertelli, 2001, xviii.
35. As we will see in the third volume of this series.
36. Thus Bloch, 1973, 150: “Because the notion of sacred royalty was so firmly entrenched in men’s minds, the reformers failed in their attempts to uproot it. The long period of popularity enjoyed by the healing rites must be considered both as the effect and the proof of their failure.”
37. Pennington, 1984, 190.
38. I draw here and in what follows on the more extended treatment in Oakley, 2010, 202–19.
39. Oakley, 2010, 73, 211–13.
40. Folz, 1969, 11.
41. In the encyclical letter *Eger Cui Levia* (ca. 1246); ed. Winkelmann, 1885, 2:696–703; partial English translation in Tierney, 1964, 147–49.
42. Ibid. I cite Tierney’s translation, 148.
43. Hocart, 1927, 128—an insight which informs the treatment of the “sacred rituals of power” set forth in Bertelli, 2001.
44. Ullmann, 1972, 139–40, where, asserting that “in this the papacy borrowed one more symbolic element from royal and imperial symbolism,” he notes that the very purpose of the coronation ceremony was “declarative” rather than “constitutive” in that it was election and his acceptance of that election that made a man pope. Cf. the concise monograph on the topic by Eichmann, 1951, and, for the broader context, Eichmann, 1942.
45. When Pope Paul VI set aside that papal crown and other trappings of papal royalty and retired them to museum status. Ullmann, 1972, 231–32, comments that “here the parallel between pope and emperor (both East and West) is noteworthy, for the emperor also had his mitre, but wore it under the imperial crown, whereas with the pope the mitre and crown served two different purposes.” He adds, too, that the three rings of the fully elaborated papal tiara of the early fourteenth century was “probably modeled on the three crowns of the Western emperor: that of Germany, of Lombardy, and of the empire, all of which were contained in one papal crown.” Cf. Eichmann, 1951.
46. A development that was not without its oddities. See the interpretation Bertelli, 2001, 177–90, gives to the practice of seating the newly crowned pope on the *sedes stercoraria* (night commode).
47. See above, ch. 2.
48. Folz, 1969, 79; cf. 201–3.
49. Pennington, 1984, 190.
50. *Decretum*, D. 40, c. 6; ed. Friedberg, 1879–81, 1:146. Tierney, 1964, 119,

- notes that even the high papalist decretist Alanus Anglicus conceded that deposition would be called for in the case of papal heresy. The more moderate decretist Huguccio went further, and envisaged any notorious papal crime as cause sufficient for the imposition of that penalty. For a full, synoptic treatment of the origin and destiny of such notions, see Oakley, 2003b.
51. “In the doctrine of the plenitude of papal power, ideas common to both ecclesiastical and secular theory were early carried to a systematic extreme which secular theory rarely emulated.” Thus Lewis, 1954, 2:387.
  52. Pennington, 1984, 58.
  53. Cf. Oakley, 2010, 165–76, and the start of the present chapter where Bracton refers to the English king as “the vicar and minister of God on earth.” For the appropriation of the title by the pope, usually referred to earlier as *vicarius Petri*, see Maccarrone, 1952, esp. 85–118.
  54. Watt, 1965, 43, 93, 95; Pennington, 1984, 11–42.
  55. Pennington, 1984, 16–71, 41. For the decretal *Quanto personam*, see X, 1, 7, c. 3, ed. Friedberg, 1879–81, 2: 95–96. There Innocent based on the special prerogative conferred on him by Christ his claim to be able to dissolve the spiritual “marriage” binding a bishop to a particular see and to translate him accordingly to another one.
  56. See Oakley, 2002, 3–5.
  57. Oakley, 1984, 42–47; Colish, 1994, 290–302.
  58. Oakley, 2002, 3–5.
  59. The distinction has been the focus of a considerable body of work, including four books in the last quarter century alone: Oakley, 1984, Randi, 1987, Courtenay, 1990, Moonan, 1994. It also looms large in, for example, Van den Brink, 1993, and Canziani, 2000. In my discussion here I draw mainly on my own previous studies devoted to the matter. In addition to Oakley, 1984, see also Oakley, 1961, 1968, 1972, 1987, 1997, 1998a and 1998b, and 2002.
  60. This is the title of Courtenay, 1990.
  61. For this last, see esp. Tachau, 1994 and 1996. For a brief, synoptic account of the history of the distinction in its various forms, and the unfolding across the past half century of competing scholarly interpretations, see Oakley, 2002.
  62. Suárez, *Metaphysicarum Disputationem*, Disp. XXX, sect. 17, §§ xxxii–xxxiii; ed. Mainz, 1600, 2:150–51. Also Disp. XXXIII, sect. 7; *ibid.*, 2:289, where he uses the phrase “de potentia absoluta, seu interveniente aliquo miraculo.” Cf. his *De legibus*, Lib. II, cap. 2; in *Selections*, 1944, 1:104, where he equates “secundum legem ordinariam” with “secundum potentiam ordinatam.”
  63. For the ways in which Hostiensis deploys the distinction, see the detailed

discussions in Pennington, 1984, 17, 65–73, and Pennington, 1993, 54–77, 106–20, though both call now for emendation in light of the developing scholarly understanding of the theological usage. Thus in Pennington, 1984, he appears incorrectly to have thought that (rather than vice versa) it was the theologians who borrowed the distinction from the canonists. And in Pennington, 1993, 69, by hewing to the interpretation in Courtenay, 1990, he is misled into thinking that “according to the theologians, God would... [never] exercise his absolute power,” whereas “Hostiensis transformed a potential into a real power.” So that (55) “it is deliciously paradoxical that a term with which theologians described God’s inaction became a term signifying great authority for terrestrial princes.” To the contrary, rather than transforming the original meaning of *potentia absoluta*, Hostiensis is simply aligning himself with the second usage current among the theologians of the day.

64. On which, see Oakley, 1968, 1972, 1984, 93–118, 1998a, 669–90 (this last reprinted in Oakley, 1999, 318–32). Cf. Wyduckel, 1979, 81, 83, 97–101, 125, 153. I will be returning to this matter in the third volume of this series.
65. Thus Wyduckel, 1979, 81, 83, 97–101, 125, 153.
66. See, for example, Hostiensis (Henricus de Segusia), *ad X*, 5, 31, 8 *in v. Ita*, and *ad X*, 5, 35, 6 *in v. nec summus Pontifex*; ed Paris, 1512, fols. LXXI r and CXXX v. With the qualifications stressed above in n. 63, I follow here Pennington, 1984, 65–73, and Pennington, 1993, 54–77. Pennington, 1993, 72, emphasizes that “dispensations are not, strictly speaking, legislative acts” and that “papal dispensatory rights did not... grant him [i.e., the pope] authority to change or abrogate divine law.”
67. Hostiensis, *ad X*, 5, 31, 8 *in v. Ita*; ed. Paris, 1512, fol. LXXI r. Cf. Pennington, 1993, 64–65, 72–74.
68. Thus Pennington, 1984, 66. Hardly surprising, then, and as Pennington notes (at 41), that Johannes Teutonicus (*fl.* 1210–45), author of the *glossa ordinaria* to Gratian’s *Decretum*, should have been moved to object to “Innocent’s ‘deification’ of the papal office.”
69. This is the view of Schatz, 1970, 84–85, 107–11; cf. Schatz, 1996, 92–93.
70. Pennington, 1984, 57–58.
71. Tierney, 1982, 61, where he adds that “some theologians came to see this as subversive of all right order in the Christian community.” The classic study of the controversy is that of Congar, 1961. See, more recently, Pennington, 1984, 4–6, 186–89.
72. Pennington, 1984, 188.
73. To this matter we will be returning in the third volume of this series.
74. Pennington, 1984, 189. He adds: “It was an important turning point in the history of political thought.”
75. See above, chapter 5, for the thinking of James of Viterbo on this matter,

- and below, chapter 8, for that of Aegidius Romanus. Cf. Watt, 1965, 97–101.
76. *De sacramentis Christianae fidei*, Lib. II, pars 2, cap. 4; ed Berndt, 2008, 339; partial translation in Tierney, 1964, 95.
  77. *De consideratione* IV, 3:7; ed. Leclercq and Rochais, 1963, 454; partial translation in Tierney, 1964, 92–94.
  78. Hauck, 1896–1920, 4:685–86. He adds (at 744) that Innocent was bent upon transforming “the moral and religious authority of the papacy into political power.” Cf. Ullmann, 1948, 146; Haller, 1962, 3:319–21. For the countervailing view, see Fliche and Martin, 1946–64, 10:213 and Maccarrone, 1940, 3–56. For a carefully nuanced appraisal, see Kempf, 1985, as well as Powell, 1994. The pertinent literature is voluminous. In addition to the above, see esp. Tillmann, 1980, 318–19, who noting that “history has denied Innocent III its highest distinction, the title of ‘the Great,’” insisted that “he deeply felt the duties resting upon him as defender of the faith and of moral law. His priestly life was blameless and his piety genuine and deep. But it was not always the highest interpretation of his office which guided his actions, and the values of law and morality which he had often high-mindedly advocated he sometimes sacrificed to his political aspirations.” In addition, from the world of Anglophone scholarship, see Carlyle and Carlyle, 1903–36, 5:182–234, and McIlwain, 1932, 231–33. For helpful commentary and the literature and on the persistence of scholarly disagreement, see Tierney, 1965, 227–43, and 1962, as well as Tierney, 1964, 127–38, for a succinct analysis of the issues at stake.
  79. Maccarrone, 1940, 31.
  80. See the works referred to above in n. 78; cf. Watt, 1988, 367–87. Tierney, 1964, 127–39, 150–57, conveniently brings together translated excerpts from the pertinent decretals of Innocent III and IV and prefaces them with lucidly succinct interpretative essays.
  81. Watt, 1965, 142–43. For the roots of that tension, see above, ch. 4.
  82. See the decretal *Si duobus*—X, 2, 28, c. 7; ed. Friedberg, 1879–81, 2: 412, where he stated that, although there were exceptions, it was “not according to the structure of the law” that an appeal should be lodged with the papal court against a judgment handed down by a civil judge.
  83. X, 2, 1, c. 13; ed. Friedberg, 1879–81, 2:243–44. I cite the translation in Tierney, 1964, 134–35.
  84. Thus *Licet*, X, 2, 2, c. 10, *Venerabilem*, X, 1, 6, c. 34, and *Per venerabilem*, X, 4, 17, c. 13; ed. Friedberg, 1879–81, 2:250, 79–82, 714–16. Partial translations in Tierney, 1964, 133–34, 136–38.
  85. Fourth Lateran Council, canon 42; in Alberigo and Tanner, eds., 1990, 1:252–53.

86. Watt, 1965, 58–73; also Tierney, 1964, 150–56, and Tierney, 1965, 234, where he concludes that “Innocent III and Innocent IV expressed substantially the same opinion on problems of church and state,” and adds that “their position cannot be adequately characterized by the two currently fashionable terms, ‘dualistic’ and ‘hierocratic.’”
87. The words are drawn, in order of citation, from letters to the prefect Acerbius and the nobles of Tuscany (1198), to the patriarch of Constantinople (1199), and to the emperor Alexius (1201); in *PL* 214:377 and 759, 216:1185—on to the decretal *Per venerabilem*, X, 4, 17, c. 13; ed. Friedberg, 1879–81, 2:715–16. English translations in Tierney, 1964, 132–33, 157.
88. X, 4, 17, c. 13; ed. Friedberg, 1879–81, 2:715–16; translation in Tierney, 1964, 135–38 (words cited at 138).
89. The words are those of Tierney, 1965, 230–31. In a careful analysis of *Per venerabilem*, Tierney, 1962, written in dialogue with the more “dualistic” interpretations of such as Maccarrone, Carlyle and Carlyle, and S. Mochi Onory (see above, n. 78), he emphasizes the significance of the fact that canonists like Laurentius Hispanus, Vicentius Hispanus and Johannes Teutonicus, who understood the decretal in the (expansive) way, were themselves “convinced dualists,” all of them otherwise “interested in defending the essential autonomy of the secular power against the hierocratic views of contemporaries like Alanus Anglicus and Tancred, who maintained that supreme spiritual and temporal power was united in the pope.”
90. See especially the letter he sent to King John of England accepting the latter’s offer to become a papal vassal. The letter is reprinted in Cheney and Semple, eds., 1953, 177–83. Cf. the commentary in Tierney, 1965, 241–42.
91. Hostiensis, 1537, fols. 215–16; commenting on X, 4, 17, c. 13 in *v. Per venerabilem*, fols. 215–16; cited from the translation in Tierney, 1964, 156–57. For the pertinent views of Alanus Anglicus, see above, ch. 4.
92. *De regimine christiano*, I, cap. 7, and I, cap. 1; ed. and trans. Dyson, 2009, 211, 6–7, 11–17.

## Chapter 8. The Christian Commonwealth (ii)

Citing H. G. J. Beck’s critical edition and translation of the account sent by the English cleric William of Hundleby to the bishop of Lincoln only twenty days after the event.—Beck, 1947, at 200–205.

1. Fawtier, 1948.
2. Ullmann, 1972, 277.
3. For further discussion of these factors, including the growing entanglement of the papacy with French interests and Angevin ambitions, see Oakley, 1979, 32–38.

4. Oakley, 2010, 203–19.
5. Ullmann, 1972, 264.
6. See Oakley, 1979, esp. 15–21, 313–18.
7. See above, ch. 2.
8. The most complete collection of the materials generated by the conflict is to be found in Dupuy, 1655. In what follows, I have relied largely on the classic accounts by Scholz, 1903, and Rivière, 1926, as well as on Carlyle and Carlyle, 1903–36, 5:374–41, Tierney, 1964, 172–92, Ullmann, 1972, Watt, 1988, 397–410, Arquillière, 1926, and Dyson, 2009. For biographical accounts of Boniface VIII and Philip IV, see Boase, 1933, and Strayer, 1980.
9. I.e., “We declare, state, define and pronounce that it is altogether necessary to salvation for every human creature to be subject to the Roman Pontiff.” Text in Friedberg, 1879–81, 2:1245–46. I cite the English translation above from Tierney, 1964, 188–89 (at 189). Earlier in the bull Boniface had referred (rather oddly) to the schismatic Greeks, and it turns out that these concluding words of formal definition are taken from Aquinas’s *Contra errores Graecorum*, 1969, pars altera, cap. 30; in *Opera omnia*, 40:103. For a careful analysis of *Unam sanctam*, the notions it drew from St. Bernard and Hugh of St. Victor, and the question of its indebtedness to Aegidius Romanus, see Rivière, 1926, 79–91, 394–414.
10. Thus Tierney, 1964, 183: “The pope may well have realized that the direct conflict in the commands that he and Philip had issued to the French prelates had in fact raised the issue of the unity of the church in a particularly serious fashion. If bishops, when pressed to choose, would obey their king rather than their pope in an ecclesiastical matter, the church could hardly remain a truly international body with its own autonomous center of government and discipline. It would become a cluster of national churches, each looking to its king for leadership in times of crisis.” This, as we will see in the third volume of this series, was far from being a redundant worry.
11. Robert, Cardinal Bellarmine, *De summo pontifice*, 5:5 and 7; in *Opera*, 1856–62, 2:152 and 157. But Finke, 1902, 159, sees him as aligned rather with traditional papal claims to a *potestas directa*. Similarly, Rivière, 1926, 89: “Ni ses idées ni son texte n'autorisent à limiter à des cas accidentales la portée de ses déclarations.”
12. See above, ch. 7.
13. The latter words are those of Tierney, 1964, 174. He reproduces a translation of the text of *Clericis laicos*, *ibid.*, 175–76.
14. I cite the translation in Tierney, 1964, 185–86; cf. his commentary at 181.
15. Dyson, 1999a, 2–11 (see 2–5 for the words cited), prints a new critical edition of the Latin text along with an English translation on facing pages.

The work appears to be an unfinished (and untransmitted) draft of a reply to *Clericis laicos*.

16. *Antequam essent clerici*; ed. and trans. Dyson, 1999a, 2–3, 5–6.
17. With the subtitle “On the Power entrusted to the prelates of the Church and to Earthly Princes.” Dyson, 1999a, 12–45, prints a new critical edition of the Latin text with an English translation on facing pages. Scholz, 1903, also prints a version of the Latin text.
18. *Disputatio*; ed. and trans. Dyson, 1999a, 38–39.
19. *Ibid.*, 40–43.
20. *Ibid.*, 11–15. This very alignment of the position of pope and emperor suggests, of course, that in the eyes of the author the pope, no less than the emperor, is in legal matters nothing more than a foreign potentate whose writ does not run within the territorial borders of the kingdom of France.
21. *Ibid.*, 16–21.
22. *Ibid.*, 20–23: “If you [the clergy],” he says, “wish to take cognizance of aforementioned cases [plunder, robbery, and the like] merely because of their connection with sin, nothing will remain other than the courts of princes to close, the laws and decrees to be silent, and yours alone to resound.”
23. Here the analogy with the English statutory provisions later embodied in *Act in Restraint of Appeals* (1533) of Henry VIII of England is striking. See the text in Bettenson, 1947, 309–15.
24. See, for example, the reply he returned in April, 1297, by way of response to Boniface’s attempt to command him to conclude a truce with the king of England and the German emperor—Dupuy, 1655, 28: “Regimen temporalitatis regni sui ad ipsum Regem solum et neminem alium pertinere, seque in eo neminem superiorem recognoscere nec habere, ne se intendere supponere vel subicere modo quocumque viventi alicui super rebus pertinentibus ad temporale regimen regni.”
25. This work, which follows the standard form of a scholastic disputation, has usually been read in the text printed in Dupuy. Dyson, 1999b, however, has now done us the great service of making it available for the first time in its totality and in a critical edition, to which he has appended an English translation. The work is analyzed by Scholz, 1903, Rivière, 1926, 262–71, and Ullmann, 1946, 180–201.
26. *Rex pacificus*; ed. and trans. Dyson, 1999b, 48: “Sed quando dicitur papa est Christi vicarius, dico quod verum est in spiritualibus, sed bene habet alium vicarium in temporalibus, videlicet, potestatem temporalem: quae cum sit a Deo, sicut dicitur ad Rom. XIII, potest dici vices Dei gerere in regimine temporalibus.”
27. Scholz, 1903, 272; cf. Rivière, 1926, 271. Thus, portraying the commonwealth as an organism and identifying the pope with its head and



the king with its heart, he insists that it is the heart that is the *totum corporis fundamentum*. And he adds that “the king... can be said to be like the heart in relation to the spiritual lord in the sense that, just as the heart is created before the head, so the temporal jurisdiction of kings came into being first, before the spiritual jurisdiction of priests or pontiffs.”—*Rex pacificus*; ed. and trans. Dyson, 1999b, 23–25, 76–77.

28. See above, ch. 5.
29. Scholz, 1903, prints the text at 459–71 and provides a helpful discussion of its author and contents at 152–65.
30. *De regia potestate et papali*, cap. 11, § 31; ed. Bleienstein, 1969, 23: “quidam de Cremona, doctor, ut dicit, in decretis.” John addresses himself to the arguments in question at §§ 31–42; ed. Bleienstein, 1969, 123–26. I analyze John’s tract in the third section of this chapter.
31. See above, ch. 5.
32. E.g., Vinay, 1939. See pertinent comments by Scholz, 1903, 40, 118; Rivière, 1926, 226; Carlyle and Carlyle, 1903–36, 405; Dyson, 1999a, xxix. See also and in general the painstakingly detailed examination of the treatise itself and its historical context in the Münster dissertation by Krüger, 2007.
33. *De eccl. pot.*, pars II, cap. 12; ed. and trans. Dyson, 2004, 188–91. Referred to henceforth as *DEP*.
34. Thus Dyson, 2004, xxi. A high papalist frequency with which, over half a millennium later, Pope Pius IX would still appear to have vibrated. Having argued at the First Vatican Council that the pope was not to be taken to speak “by his own will independent of the Church” but “with the counsel of the bishops who show the tradition of their churches,” Cardinal Guidi, archbishop of Bologna, found himself immediately hauled on the pontifical carpet by an apoplectic Pius IX who, denouncing Guidi’s views as erroneous, furiously insisted that that was so because “I, I am Tradition, I, I am the Church.” See Chadwick, 1998, 210–11; Schatz, 1993–94, 3, app. 1, 323–31, where the evidence for the incident and for the pope’s outburst is carefully weighed.
35. *DEP*, pars I, cap. 5; ed. and trans. Dyson, 2004, 26–27.
36. *DEP*, pars II, cap. 6 and 8; ed. and trans. Dyson, 2004, 120–23, 140–41.
37. *DEP*, pars III, cap. 4; ed. and trans. Dyson, 2004, 310–11.
38. *DEP*, pars I, cap. 7, 8 and 9; pars II, cap. 13; ed. and trans. Dyson, 2004, 39–61, 211–67. See also pars III, cap. 7, 10 and 11; *ibid.*, 343, 349–51, 315, 389.
39. *DEP*, pars I, cap. 8; ed. and trans. Dyson, 2004, 48–49. Cf. pars I, cap. 9, pars III, cap. 10 and 11; *ibid.*, 55, 375, 389. For Bernard, see above, ch. 7.
40. *DEP*, pars II, cap. 13, III, cap. 7 and 11; ed. and trans. Dyson, 2004, 219, 349, 389.

41. *DEP*, pars II, cap. 18, III, cap. 7; ed. and trans. Dyson, 2004, 253, 343, 349.
42. For the evaluation of the authority of Bernard of Clairvaux, see *DEP*, pars I, cap. 8, II, cap. 14 and 15, III, cap. 10. And for his use of Hugh of St. Victor's *De sacramentis Christianae Fidei*, see e.g., *DEP*, pars I, cap. 4 and 5, II, cap. 5 and 10, III, cap. 11; ed. and trans. Dyson, 2004, 251, 261–63, 375 (for Bernard), 17, 23, 27, 163, 279ff. (for Hugh of St. Victor).
43. For the withdrawal of power from the latter should they abuse their position, see *DEP*, pars I, cap. 5, 6 and 7, II, cap. 5 and 13, III, cap. 1; ed. and trans. Dyson, 2004, 29–31, 44–45, 100–103, 216–19, 282–85.
44. *DEP*, pars I, cap. 5, ed. and trans. Dyson, 2004, 24–25.
45. For the central role this vision of things played in the evolution of papalist thinking, see Oakley, 2010, 209–10.
46. *DEP*, pars II, cap. 13; ed. and trans. Dyson, 2004, 236–38.
47. I will be addressing their thinking on the matter of *dominium* as contingent on grace in the third volume of this series.
48. *DEP*, pars II, cap. 7; ed. and trans. Dyson, 2004, 130–31.
49. *DEP*, pars II, cap. 10; ed. and trans. Dyson, 2004, 162–63; cf. pars II, cap. 7; *ibid.*, 138–39. The contrast is between “*dominium utile... cujusmodi est fructiferum*” and “*dominium potestativum, cujusmodi est dominium jurisdictionem habens.*” The reference is to Hugh of St. Victor, *De sacramentis Christianae fidei*, Lib. II, pars 2, cap. 7; ed. Berndt, 2008, 341.
50. Pollock and Maitland, 1911, 1:230.
51. That older notion had involved as its “essential attribute” the legal right of *abusus*—that of destroying or disposing of the property in question. See Meynial, 1908, 2:411–61 (at 411). This whole paper, though it limits itself to the evidence found in the civilian writing and does not explore the canonistic literature or the cartularies, seems still to be the best account of the emergence of the notion of divided *dominium*. Shorter accounts in McIlwain, 1932, 178–82; Ganshof, 1961, 117–18; Oakley, 1964, 66–75; Coleman, 1988, 607–48.
52. Ganshof, 1961, 117.
53. Meynial, 1908, 2:420ff., where he traces the development of the doctrine. It found clear expression in the *glossa ordinaria* of Accursius in 1228, but only in the wake of Bartolus in the early fourteenth century were the full manifestations of the theory worked out and earlier hesitations and inconsistencies removed.
54. Oakley, 2010, 185–99.
55. Thus McIlwain, 1932, 70n1, alludes to Aristotle's *Politics*, I, 5 as “one of the main sources of the medieval theory of ‘dominium.’”
56. For the importance of the mendicant-secular and Franciscan-Dominican disputes throughout the latter part of the thirteenth century, see esp. Coleman, 1985 and 1988, 628–38.

57. See Coleman, 1985; 1988, 628–38; 1991.
58. *DEP*, pars II, cap. 7; ed. and trans. Dyson, 2004, 130–31.
59. *DEP*, pars III, cap. 11; ed. and trans. Dyson, 2004, 388–89.
60. *DEP*, pars I, cap. 4; ed. and trans. Dyson, 2004, 18–19.
61. The pertinent passages in Augustine occur at *De civitate dei*, 2:21, 19:21, 23 and 24, 4:4, and 15:8; *CSSL* 47:52–55, 48:687–89, 690–96, 47:101–2, 48:463–65, trans. Bettenson, 1972, 72–75, 881–83, 889–91, 139, and 607. For my own interpretation of these passages, which sets me at odds with such modern proponents of the “clericalist” interpretation as Bernheim, 1896, Combès, 1927, McIlwain, 1932, Sabine, 1937, and Wilks, 1967. See Oakley, 2010, 117–42.
62. Oakley, 2010, 131–37.
63. For the rise of this type of “Augustinisme politique,” see Arquillière, 1955, Oakley, 2010, 137–42.
64. *DEP*, pars II, cap. 7, III cap. 10; ed. and trans. Dyson, 2004, 130–31, 136–37, 374–75.
65. See above, chs. 5 and 7.
66. *DEP*, pars III, cap. 2 and 11; cf. pars I, cap. 5 and II, cap. 11; ed. and trans. Dyson, 2004, 285, 382–83; cf. 25, 182–83.
67. *DEP*, pars II, cap. 12; ed. and trans. Dyson, 2004, 200–201.
68. See above, ch. 7, where this matter and these particular decretals are discussed and where the point is also made that even Innocent IV himself betrayed a comparable deference to the jurisdiction of temporal rulers.
69. See esp. *DEP*, pars III, cap. 5–8; ed. and trans. Dyson, 2004, 319–61, where he attempts to deal with Alexander III’s *Si duobus*, *Lator*, and *Causam*, as well as with Innocent III’s *Novit*, *Licet*, and *Per venerabilem*.
70. *DEP*, pars III, cap. 7; ed. and trans. Dyson, 2004, 314–15. Cf. III, cap. 1 (*ibid.*, 272–73), where he says of Alexander III’s decretal *Si duobus* that if “Alexander III, or anyone else who might have been pope at some time, has made any pronouncements detrimental to the jurisdiction of the Church or detrimental to the Church’s power, he has in no way prejudiced, nor could he prejudice, his successor.”
71. Thus *DEP*, pars II, cap. 14, III, cap. 2, 3, 7, and 9; ed. and trans. Dyson, 2004, 248–51, 294–99, 300–305, 344–47, 360–65, 368–71.
72. See above, ch. 7. The “operationalized” understanding of the *potentia absoluta* envisages it as involving an ever-present potential for departing on extraordinary occasions from the divinely established order of things.
73. *DEP*, pars III, cap. 3; ed. and trans. Dyson, 2004, 300–301. Not, indeed, he concedes, “a similarity in every respect, but a measure of similarity nonetheless; and this similarity is sufficient for our purpose.”
74. *DEP*, pars III, cap. 2; ed. and trans. Dyson, 2004, 290–91. Again, *ibid.*,

294–95; “God, in ruling this whole world, and the Vicar of God, in ruling the faithful under God, is a kind of fount and a kind of sea of force and power, from which all other powers are derived and to which all are reduced and ordered.”

75. *DEP*, pars III, cap. 2 and 7; ed. and trans. Dyson, 2004, 296–99, 344–47 (italics mine).
76. *DEP*, pars III, cap. 9; ed. and trans. Dyson, 2004, 360–63. This is so by definition, for he states that “plenitudo potestatis est in aliquo agente quando illud agens potest sine causa secunda quicquid potest cum causa secunda.” And (pace Courtenay, 1990, 100) he goes on to attribute a *plenitudo potestatis* to both God and pope by virtue of their possession of that ability. He concedes, however (366–67), that whereas God has all power “absolutely,” the pope has the plenitude of power only “to the extent as there is power within the Church, in that all the power which is in the Church is contained in the Supreme Pontiff.”
77. *DEP*, pars III, cap. 9; ed. and trans. Dyson, 2004, 370–71.
78. *DEP*, pars III, cap. 7; ed. and trans. Dyson, 2004, 342–45. By reason of that jurisdiction, “which he has in all cases, over earthly powers and temporal goods alike, by reason of which he can act against earthly powers for their fault or for some other good cause.” He goes on in the same place, and almost as an afterthought, to note that the pope also has “another kind of jurisdiction over temporal matters, which is not direct and regular” but “occasional,” and precisely because it is merely occasional, it is to be attributed not to his *potestas absoluta* but to his *potestas regulata*.
79. See above, ch. 7.
80. *DEP*, pars III, cap. 2; ed. and trans. Dyson, 2004, 290–91.
81. *DEP*, pars III, cap. ult.; ed. and trans. Dyson, 2004, 390–91. Here, he is taking his cue from the words of Wisdom 11:21 about God: “You have ordered all things in measure and number and weight.”
82. McIlwain, 1932, 249.
83. Though it may be that was not *quite* the case in his *De regimine principum*. See above, ch. 5.
84. *DEP*, pars I, cap. 2 and 3; ed. and trans. Dyson, 2004, 10–11, 16–17.
85. See above, n. 57.
86. See Leclercq, 1942, 36. Dyson, 1999a, xxviii n70, comments that “No one who reads John of Paris can possibly doubt that he had before him a copy of the *Quaestio in utramque partem*.”
87. Almost certainly the work of a Frenchman and dating probably to the middle of 1302, the work is most readily available in the critical edition (with English translation on facing pages) by Dyson, 1999 a, 46–111. The work is analyzed by Scholz, 1903, 224–51; Rivière, 1926, 272–81; Watt, 1967, 411–50; and Dyson, 1999a, xxviii–xxxi, this last a good, brief

- introduction. Scholz (229) takes the author—with “gewissen Sicherheit”—to be a jurist, but Rivière (131) refers to him as a university-based “theologian-philosopher.”
88. *Quaestio*, opening statement; ed. and trans. Dyson, 1999a, 46–47.
  89. *Quaestio*; ed. and trans. Dyson, 1999a, 64–66. For the two disparate views of kingship, positive and negative, embedded in Samuel, see Oakley, 2010, 50–51.
  90. See, e.g., *Quaestio*; ed. and trans. Dyson, 1999a, 50–51, 70–73.
  91. Thus *ibid.*, 52–53, 58–63.
  92. *Ibid.*, 58–63, 80–81.
  93. *Ibid.*, 66–69, 74–77.
  94. See above, nn. 86 and 87.
  95. Thus, e.g., Leclercq, 1942, 10–14; Watt, 1971, Introduction, 27. For the background to John of Paris and his philosophical and theological views in general, I am indebted to Finke, 1902, 170–77; Grabmann, 1922; Griesbach, 1959; Roensch, 1964, 98–104, 142–48. I have made use of the following analyses of the *Tractatus de regia potestate et papali*: Scholz, 1903, 275–333; Rivière, 1926, 148–80, 285–300; Leclercq, 1942, 10–149; Tierney, 1955, 157–78; Watt, 1971, 9–63; Coleman, 1985, 1987, 1988, 1991, and 1992.
  96. Classically by Leclercq, 1942, 161–65.
  97. Watt, 1971, 42–43.
  98. Finke, 1902, 120–77 (at 171): “Wohl ist die Schrift im Aufbau gerade kein Kunstwerk: sie knüpft eine Reihe Traktate lose aneinander.”
  99. See esp. Coleman, 1992, 174–75; cf. Coleman, 1991, 182–89, and 1987, 75–110.
  100. Thus Coleman, 1988, 638–39, and 1991, 76–77.
  101. Neither Coleman, 1985, nor Swanson, 1997, is hesitant about postulating the existence of an intellectual tradition or affiliation linking the treatise with the views of John Locke in the seventeenth century.
  102. Thus Tierney, 1964, 196.
  103. Thus Griesbach, 1959, 35–36, 43. See *De regia potestate et papali* (referred to henceforth as *DPP*), cap. 1; ed. Bleinenstein, 1969, 75: “Regnum est regimen multitudinis perfectae ad communem bonam ordinatum ab uno.... Perfectae dicitur ad differentiam multitudinis domesticae quae non est perfecta, quia sibi non sufficit nisi ad modicum tempus et non ad totam vitam sicut civitas secundum Philosophum *I Politicorum*.” English translation in Watt, 1971, from the edition of the Latin text in Leclercq, 1942.
  104. *DPP*, cap. 1; ed. Bleienstein, 1969, 76–77; trans. Watt, 1971, 76–79.
  105. *DPP*, cap. 4; ed. Bleienstein, 1969, 85–87; trans. Watt, 1971, 89–91.

106. *DPP*, cap. 3; ed. Bleienstein, 1969, 85–87; trans. Watt, 1971, 85–87, where he adds as an argument underpinning the diversity of temporal monarchies, the fact that laymen do not hold property in common, for “each is master of his own property as acquired through his own industry. There is no need therefore for one [supreme monarch] to administer temporalities in common since each is his own administrator to do with his own what he wishes.”
107. *DPP*, cap. 5, 10, 17; ed. Bleienstein, 1969, 88, 113, 160; trans. Watt, 1971, 93, 124, 186.
108. *DPP*, cap. 10, 15, 17, 19; ed. Bleienstein, 1969, 113, 150–51, 158, 173; trans. Watt, 1971, 124, 173, 183, 203. Note that in the case of kings, John sometimes substitutes “the barons” for the people, and, in the case of emperors, the army. See *DPP*, cap. 14, 15, 19; ed. Bleienstein, 1969, 146, 150–51, 314; trans. Watt, 1971, 147, 173, 203.
109. *DPP*, cap. 18; ed. Bleienstein, 1969, 152–63; trans. Watt, 1971, 189–91, where he also notes that not all Christian kings actually observed the practice of anointing.
110. *DPP*, cap. 3 and 17; cf. 18; ed. Bleienstein, 1969, 82, 157.
111. *DPP*, cap. 2 and 18; ed. Bleienstein, 1969, 78, 163; trans. Watt, 1971, 81, 191.
112. John, in fact, makes the task definitive of the nature of priesthood: “Ex quibus praedictis potest sacerdotium in hunc modum: sacerdotium est spiritualis potestas ministris ecclesiae a Christo collata ad dispensandum fidelibus sacramenta.”—*DPP*, cap. 2; ed. Bleienstein, 1969, 78–79; trans. Watt, 1971, 80–82.
113. *DPP*, cap. 2 and 13; ed. Bleienstein, 1969, 79 and 80–81; trans. Watt, 1971, 82, 83–85.
114. *DPP*, cap. 5; ed. Bleienstein, 1969, 87–88; trans. Watt, 1971, 92–93.
115. Watt, 1971, Introduction, for a useful comment on John’s methodology. The words cited occur at 43.
116. *DPP*, cap. 11 (Nos. 4 and 30), 14 (reply to No. 4), 18 (reply to No. 3); cf. cap. 20; ed. Bleienstein, 1969, 118, 122–23, 144–45, 167–69, 214; trans. Watt, 1971, 131, 136, 165–66, 196–98, 219.
117. *DPP*, cap. 8, 10; ed. Bleienstein, 1969, 98–99, 101–102, 106–7; trans. Watt, 1971, 106–8, 109–10, 115–16.
118. *DPP*, cap. 10; ed. Bleienstein, 1969, 108–9; trans. Watt, 1971, 118–19.
119. *DPP*, cap. 10; ed. Bleienstein, 1969, 110–11, 113; trans. Watt, 1971, 121, 124.
120. “[P]otestatem saecularem in sacerdotali contineri et ab ea institui.”—*DPP*, cap. 10, 11; ed. Bleienstein, 1969, 90, 121; trans. Watt, 1971, 96, 130 (where he cites a papalist argument to the effect that “the spiritual power granted to the ministers of the church is superior to the secular power not merely in dignity but insofar as the one is the cause of the other and directs

- how it should work.”) Cf. cap. 17, 18 Bleienstein, 1969, 159–60, 164; trans. Watt, 1971, 184–86, 196.
121. “since they are churchmen whose careers the pope could advance.”—*DPP*, cap. 20; ed. Bleienstein, 1969, 184; trans. Watt, 1971, 218.
  122. *DPP*, cap. 13; ed. Bleienstein, 1969, 134; trans. Watt, 1971, 151.
  123. *DPP*, cap. 8; ed. Bleienstein, 1969, 99, 101–2; trans. Watt, 1971, 107, 109–10.
  124. *DPP*, cap. 6 and 7; ed. Bleienstein, 1969, 90–98; trans. Watt, 1971, 96–105.
  125. John unfolds this argument for an indirect power on the part of popes or kings to work indirectly to deprive the other of office in *DPP*, cap. 13; ed. Bleienstein, 1969, 135–41; trans. Watt, 1971, 152–60.
  126. For d'Ailly, see Oakley, 1964, 40–51; for Gerson, Posthumus Meyjes, 1999, 278–82; and for Bellarmine, Murray, 1948, 491–535.
  127. *DPP*, cap. 14 and 13; ed. Bleienstein, 1969, 145–46, 136; trans. Watt, 1971, 166–67, 156.
  128. *DPP*, cap. 14; ed. Bleienstein, 1969, 174–76; trans. Watt, 1971, 204–207. For Aquinas's original formulation of the argument, see *ST* 1a 2ae, qu. 105, art. 1; in d'Entrèves, 1959, 149–51.
  129. *Ibid.* Cf. the discussion in Blythe, 1992, 139–57.
  130. D'Ailly, *Tractatus de ecclesiastica potestate*; in Dupin, ed., 1706, 2:946; cf. the discussion in Oakley, 1964, 117–19.
  131. “loco totius cleri,” “loco totius populi,” “loco totius ecclesiae.” *DPP*, cap. 13; ed. Bleienstein, 1969, 140, 200, 201; trans. Watt, 1971, 159, 241, 242, 243. Cf. Bleienstein, 138; Watt, 156.
  132. “Credo... quod simpliciter sufficeret ad depositionem collegium cardinalium, quia ex quo consensus eorum facit papam loco ecclesiae, videtur similiter quod potest ipsum deponere.” *DPP*, cap. 24, cf. 25; ed. Bleienstein, 1969, 201–2, 206–7, trans. Watt, 1971, 241–43, 249–50.
  133. Citing *Decretum*, D. 21, cap. *Nunc autem*. *DPP*, cap. 24; ed. Bleienstein, 1969, 201; trans. Watt, 1971, 243. John also discusses the issue of papal correction and deposition in cap. 6, 13, 22 and 25.
  134. Tierney, 1955, 177. In what follows I am much indebted to Tierney's fine analysis at 157–78.
  135. *DPP*, cap. 3, cf. cap. 6; ed. Bleienstein, 1969, 81, 91; trans. Watt, 1971, 84, 96–97.
  136. *DPP*, cap. 6; ed. Bleienstein, 1969, 90–95; trans. Watt, 1971, 96–101.
  137. *Decretum*, D. 40, c. 6; ed. Friedberg, 1879–81, 1:146. For the handling of the text by the decretists, see Tierney, 1955, 56–67 (words cited at 59 and 66). Cf. Oakley, 2010, 210–11.
  138. Thus, e.g., *DPP*, cap. 6, cf. 22; ed. Bleienstein, 1969, 95, 192–96; trans. Watt, 1971, 101–2, 219–35.



139. *DPP*, cap. 21; ed. Bleienstein, 1969, 202–3, 208; trans. Watt, 1971, 242–43, 252.
140. See above, ch. 7 and 8.
141. *DPP*, cap. 25; ed. Bleienstein, 1969, 208–9; trans. Watt, 1971, 252–53.
142. Tierney, 1955, 177–78.
143. As Figgis, 1960, 56, put it long ago: “speculation on the possible power of the council as the true depository of sovereignty within the Church drove the [Conciliar] thinkers to treat the Church definitively as one of a class, political societies.”

## Epilogue

1. “Ratio autem quare illa quae sunt ordinis non possunt auferri et ea quae sunt jurisdictionis auferri possunt esse potest quia ea quae sunt jurisdictionis non sunt super naturam et condicionem negotii et super conditionem hominum, quia non est super condicionem hominum quod homines praesint hominibus, immo *naturale* est aliquo modo.... Et ideo sicut per consensum hominum jurisdictio datur, ita per contrarium consensum tollitur.”—*Tractatus*, cap. 25; ed. Bleienstein, 1969, 209; trans. Watt, 1971, 252 (italics mine).
2. Another evidence, it may be, of the “contraction of the sphere of the supernatural” of which Bartlett, 2008, 27 (evoking the similar sentiments expressed by Southern, 1970, and Brown, 1982) speaks.
3. For the tradition of thought in question, see Oakley, 2003b, 216–49; cf. Skinner, 1980; Kley, 1996.
4. John Ponet, *A Shorte Treatise of Politicke Power* (1557), facsimile reprint in Hudson, 1942, 105.

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For this period in medieval political thinking in general, there are good bibliographies in J. H. Burns, ed., *The Cambridge History of Medieval Political Thought, c. 350–c. 1450* (Cambridge: Cambridge University Press, 1988), 694–777, in Arthur P. Monahan, *Consent, Coercion and Limit: The Medieval Origins of Parliamentary Democracy* (Kingston and Montreal: McGill-Queen's University Press, 1987), 265–325, and (more selective) in Joseph Canning, *A History of Medieval Political Thought, 300–1450* (London and New York: Routledge, 1996), 226–46. For particular topics, and in addition to the above, reference may profitably be made to the helpful selective bibliographies in such works as Karl F. Morrison, *Tradition and Authority in the Western Church, 300–1140* (Princeton: Princeton University Press, 1969), Klaus Schatz, *Papal Primacy from Its Origins to the Present*, trans. J. A. Otto and L. M. Maloney (Collegeville, MN: Liturgical Press, 1996), Ute-Renate Blumenthal, *The Investiture Controversy: Church and Monarchy from the Ninth to the Twelfth Century* (Philadelphia: University of Pennsylvania Press, 1988), Chris D. Ferguson, *Europe in Transition: A Select, Annotated Bibliography of the Twelfth-Century Renaissance* (New York and London: Garland Publishing, 1989), Detlev Jasper and Horst Fuhrmann, *Papal Letters in the Early Middle Ages. History of Medieval Canon Law* (Washington, DC: Catholic University of America Press, 2001), and Wilfried Hartmann and Kenneth Pennington, eds., *The History of Medieval Canon Law in the Classical Period, 1140–1234: From Gratian to the Decretals of Pope Gregory IX* (Washington, DC: Catholic University of America Press, 2008).

## General Accounts

Compared with the earlier medieval period, the centuries covered by this volume have been well served by the general histories. Thus the classic account by R. W. and A. J. Carlyle, *A History of Medieval Political Theory*, 6 vols. (London and Edinburgh: William Blackwood and Sons, 1903–36), last printed in 1950, devotes a full three volumes, 3–5, to this period, the more valuable because of their generous citation of crucial texts from sources that are frequently not readily available. Similarly, the bulk of Charles Howard McIlwain, *The Growth of Political Thought in the West* (New York: Macmillan, 1932) and of Ewart Lewis, *Medieval Political Ideas*, 2 vols. (London: Routledge and Kegan Paul, 1954), is devoted to these centuries, as also is Arthur D. Monahan, *Consent, Coercion and Limit: The Medieval*

*Origins of Parliamentary Democracy* (Kingston and Montreal: McGill-Queen's University Press, 1987). Or, again, Janet Coleman, *A History of Political Thought: From the Middle Ages to the Renaissance* (Oxford: Blackwell, 2000), and, of course, *The Cambridge History of Medieval Political Thought, c. 350–c. 1450*, ed. J. H. Burns (Cambridge: Cambridge University Press, 1988). Of the shorter histories, mention should be made of John B. Morrall, *Political Thought in Medieval Times* (New York: Harper Torchbooks, 1958), Walter Ullmann, *Principles of Government and Politics in the Middle Ages* (London: Methuen, 1961), and idem, *A History of Political Thought in the Middle Ages* (Harmondsworth, Middlesex: Penguin Books, 1965), and Joseph P. Canning, *A History of Medieval Political Thought, 300–1450* (London: Routledge, 1996). Brian Tierney, *The Crisis of Church and State, 1050–1300* (Englewood Cliffs, NJ: Prentice-Hall, 1964), provides much more than a useful collection of translated documents, and insights of a similarly high interpretative order may be found in the essays collected together in Beryl Smalley, ed., *Trends in Medieval Political Thought* (Oxford: Basil Blackwell, 1965). For medieval intellectual life at large, a well-informed, coherent, concise, and up-to-date account may be found in Marcia L. Colish, *Medieval Foundations of the Western Intellectual Tradition, 400–1400* (New Haven: Yale University Press, 1997).

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